

**EXHIBIT F**

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI

MISSOURI STATE CONFERENCE OF	)	
THE NATIONAL ASSOCIATION FOR	)	
THE ADVANCEMENT OF COLORED	)	
PEOPLE, REDDIT HUDSON,	)	
F. WILLIS JOHNSON and	)	
DORIS BAILEY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CASE NO. 14-2077
	)	
FERGUSON-FLORISSANT SCHOOL	)	
DISTRICT and ST. LOUIS COUNTY	)	
BOARD OF ELECTIONS	)	
COMMISSIONERS,	)	
	)	
Defendants.	)	

Deposition of WILLIAM COOPER, taken on

Behalf of the Defendant.

August 17, 2015

Reported by Sandra McGraw, CCR, CSR  
MCGRAW REPORTING, L.L.C.  
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1 UNITED STATES DISTRICT COURT FOR THE  
2 EASTERN DISTRICT OF MISSOURI  
3 MISSOURI STATE CONFERENCE OF )  
4 THE NATIONAL ASSOCIATION FOR )  
5 PEOPLE, REDDIT HUDSON, )  
6 F. WILLIS JOHNSON and )  
7 DORIS BAILEY, )  
8 Plaintiffs, )  
9 vs. ) CASE NO. 14-2077  
10 FERGUSON-FLORISSANT SCHOOL )  
11 DISTRICT and ST. LOUIS COUNTY )  
12 BOARD OF ELECTIONS )  
13 COMMISSIONERS, )  
14 Defendants. )  
15  
16 Deposition of WILLIAM COOPER, produced, sworn and  
17 examined on the 17th day of August, 2015, between the  
18 hours of nine-thirty in the forenoon and two o'clock in  
19 the afternoon of that day in the law offices of Crotzer  
20 & Ormsby, 130 South Bemiston Avenue, Suite 602, in the  
21 County of St. Louis, State of Missouri, before Sandra  
22 McGraw, CCR #614, in a certain cause now pending in the  
23 United States District Court for the Eastern District  
24 of Missouri, MISSOURI STATE CONFERENCE OF THE NATIONAL  
25 ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,  
REDDIT HUDSON, F. WILLIS JOHNSON, and DORIS BAILEY,  
Plaintiffs, vs. FERGUSON-FLORISSANT SCHOOL, et al.,  
Defendants; on behalf of the Defendants.

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1 APPEARANCES  
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24 and Ms. Angela Bullock Gabel  
25

1 WILLIAM COOPER,  
2 of lawful age, being duly sworn to tell the truth, the  
3 whole truth, and nothing but the truth, deposes and  
4 says on behalf of the Defendant as follows:  
5 DIRECT EXAMINATION  
6 BY MS. ORMSBY:  
7 Q. Okay. Mr. Cooper, I know you've had your  
8 deposition taken many times but I'll just go briefly  
9 over the depo rules, which I'm sure you could probably  
10 cite better than I can.  
11 A. Oh, no.  
12 Q. Let's take turns speaking. Don't answer my  
13 question until I'm finished asking it and I'll try to  
14 do the same and not interrupt you when giving your  
15 answer so that the court reporter can get everything  
16 down and we can have a clean transcript.  
17 A. Okay.  
18 Q. Answer verbally like you just did. Yes, no,  
19 okay. Nodding of the head, shaking of the head,  
20 doesn't read very well in a transcript as well.  
21 If you need a break at any time, if any of you do,  
22 just say the word and just -- I would just ask that you  
23 answer any question that's on the table before we take  
24 a break. Okay?  
25 A. Okay.

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1 Q. All right.

2 MR. McDONALD: Can I just note that we will

3 reserve the right to make any objections given the

4 proposed use of the deposition?

5 MS. ORMSBY: Okay.

6 MR. McDONALD: We won't make any objections

7 now.

8 MS. ORMSBY: Okay. All right.

9 MR. McDONALD: Okay.

10 Q. (By Ms. Ormsby) All right. If you're ready,

11 what have you done to prepare for this deposition?

12 A. I reviewed my declarations.

13 Q. Okay.

14 A. That's the extent of it really.

15 Q. Have you spoken with any of other experts in

16 this case?

17 A. To prepare for this deposition?

18 Q. Uh-huh.

19 A. No.

20 Q. Okay. You just said you reread your reports.

21 Did you read any of the other reports that were filed

22 in this case?

23 A. I did read Dr. Rodden's initial expert report

24 and the joint supplemental declaration filed by

25 Dr. Rodden and Dr. Chen.

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1 Q. And have you spoken to anyone besides the

2 Plaintiffs' attorney in order to prepare for this

3 deposition?

4 A. No.

5 Q. I'd like to start with just some basic

6 education background. Can you tell me where you when

7 to high school?

8 A. I went to Virginia High School in Bristol,

9 Virginia. It's right on the state line so Virginia

10 High School is in Bristol, Virginia, and Tennessee High

11 School is in Tennessee.

12 Q. Okay. And where did you go to college?

13 A. I went to Davidson College in Davidson, North

14 Carolina.

15 Q. Okay.

16 A. Which is just outside of Charlotte.

17 Q. Did you graduate?

18 A. I did.

19 Q. And what is your degree in?

20 A. BA in economics.

21 Q. Okay. Did you go on to grad school?

22 A. I took some graduate level courses at Virginia

23 Tech and Urban Planning but I did not finish that

24 master's program.

25 Q. Okay.

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1 A. Just because I decided that was not a field I

2 was particularly interested in obtaining employment in.

3 Q. Okay. And then where were you employed

4 immediately out of college?

5 A. Immediately out of college, I think my first

6 job was putting some sort of yellow foam on an

7 industrial plant in Bristol, Tennessee, in the summer.

8 And then later that fall I -- I was interested in

9 seeing some of the American West so I traveled to

10 Albuquerque, New Mexico, and worked in an Arby's roast

11 beef for about six months. And then I worked in

12 Glacier Park that summer at the concessionaire in West

13 Glacier. It's like McDonald.

14 Q. So --

15 A. But go ahead. We're getting off on a tangent.

16 Q. So when did you graduate? What year did you

17 graduate from college?

18 A. '75.

19 Q. Okay. And so was it the summer of '75 where

20 you started working putting the yellow stuff down?

21 A. I did.

22 Q. Okay.

23 A. I did.

24 Q. And you worked -- and then you headed west?

25 A. Uh-huh.

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1 Q. And you ended up at Estes Park the following

2 summer; would that be accurate?

3 A. Not Estes Park, West Glacier.

4 Q. West Glacier. Sorry.

5 A. I did work in Estes Park one summer but that

6 was in college.

7 Q. Okay. What did you do after that?

8 A. Then I -- well, I took a trip to British,

9 Columbia, and the southeast corner of Alaska with a

10 couple of buddies. But after that I worked the apple

11 harvest in the Yakima Valley of Washington state.

12 Q. Okay.

13 A. And then I returned back to Bristol and worked

14 at my uncle's nursery for a few months, and then I left

15 for a lengthy journey to South America.

16 Q. Okay.

17 A. That would have been in 1978.

18 Q. And how long were you in South America?

19 A. I was there about eight or nine months.

20 Q. What did you do down in South America?

21 A. Just trekking around with a backpack.

22 Q. So you weren't in one specific country, you

23 just went?

24 A. No, I -- I spent some time in Mexico.

25 Actually took a quick class in Spanish in Cuernavaca, I

3 (Pages 6 to 9)

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1 guess, there in the initial stage of my trip. But most  
 2 of the journey was either in Mexico or in the Andean  
 3 countries: Columbia, Ecuador, Peru, Chili, Argentina.  
 4 Q. How did you fund your trip?  
 5 A. From picking apples and working in my uncle's  
 6 nursery. I mean, it was really cheap. I just -- I  
 7 stayed in, you know, really inexpensive lodging while I  
 8 was down there.  
 9 Q. Okay.  
 10 A. And in those days it was really cheap.  
 11 Q. So you came back from South America?  
 12 A. Uh-huh.  
 13 Q. What did you do then?  
 14 A. I enrolled at Virginia Tech in the Urban  
 15 Regional Planning Program.  
 16 Q. Okay. And did you work while you were in that  
 17 program?  
 18 A. Well, I did have an assistance -- what do they  
 19 call it? Assistantship? So I did do some stuff. It  
 20 was not particularly enlightening I didn't think.  
 21 Q. But at Virginia Tech?  
 22 A. Yeah. Uh-huh.  
 23 Q. And how long were you at Virginia Tech?  
 24 A. About a year.  
 25 Q. Okay. And then what did do you?

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1 A. Then I started working as an outreach person  
 2 for a migrant farm worker employment training program.  
 3 That organization also did other -- other things. That  
 4 was a primary concern. But they also worked on housing  
 5 issues and nutrition issues.  
 6 Q. And what was your job there?  
 7 A. Outreach worker. I worked in -- initially in  
 8 Northern Virginia visiting migrant labor camps as part  
 9 of the apple harvest up there.  
 10 Q. Okay.  
 11 A. And then later I worked on a housing program  
 12 in Richmond, Virginia, that was designed to assist farm  
 13 workers find more permanent housing in towns and cities  
 14 if they choose to leave farm work for other kinds of  
 15 appointment.  
 16 Q. And what was the organization that you were  
 17 employed with?  
 18 A. It's Telamon, T-E-L-A-M-O-N.  
 19 Q. And how long did you work for them?  
 20 A. A couple of years.  
 21 Q. Can you give me the years? What years?  
 22 A. '81, '80. Then with those earnings I went  
 23 back to Latin America for about seven or eight months.  
 24 Q. Okay.  
 25 A. And then I came back to Richmond. Worked

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1 briefly for the Virginia -- it's a student loan  
 2 authority. I can't remember the name of it now. But I  
 3 work there for about six months or so. And then I  
 4 started working for another migrant farm worker  
 5 organization that was based in Delaware called  
 6 Delmarva, D-E-L-M-A-R-V-A, Rural Ministries. They were  
 7 primarily focused on health and nutrition issues.  
 8 Q. Okay.  
 9 A. And it was with that job that I ended up  
 10 working out of the American Civil Liberties Union  
 11 Office in Richmond working on migrant farm worker  
 12 nutrition issues as well as nutrition issues relating  
 13 to all kids who are school age, summer food and school  
 14 breakfast programs in particular.  
 15 Q. So was the Delmarva organization an arm of the  
 16 ACLU?  
 17 A. No, no. It was based in Dover, Delaware, with  
 18 health clinics in Nassawadox, Virginia, and obviously  
 19 in Dover and also in Snow Hill, Maryland. Some of the  
 20 migrant farm worker impacted areas on the eastern shore  
 21 of Virginia. But I was the only employee really based  
 22 in Richmond.  
 23 Q. Okay.  
 24 A. And -- because it was just me, I needed office  
 25 space so I worked out of an ACLU office.

Page 13

1 Q. Okay. So how long did you work for Delmarva?  
 2 A. Well, I ended up working part-time for  
 3 Delmarva and part-time for the ACLU of Virginia.  
 4 Q. What year was that?  
 5 A. This would have been from around 1984 to --  
 6 part-time for the ACLU till around 1991 or so. On the  
 7 Voting Rights Project, specifically doing election  
 8 maps. And at some point around 1991 it just got kind  
 9 of overwhelming. There was no way I could keep up with  
 10 the demand to do election maps, so I resigned from  
 11 Delmarva and just started working for the ACLU of  
 12 Virginia full time.  
 13 Q. So what training did you have to begin drawing  
 14 voting maps for the ACLU when you started doing that?  
 15 A. Well, there's no -- at that point in time I'm  
 16 not sure if there was any real training available per  
 17 se. I had taken a couple of classes, I guess, at  
 18 Virginia Tech where I did have some involvement with  
 19 census data and rudimentary mapping as it existed in  
 20 the early 1980s, rudimentary computer mapping, but  
 21 beyond that I really didn't have any specific training.  
 22 When I started, really most of the mapping work  
 23 had to be done with paper maps because so much of the  
 24 country was not digitized so you had to work with  
 25 census paper maps. And I essentially just used a Lotus

4 (Pages 10 to 13)

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1 123 spreadsheet and sorted and allocated blacks to  
2 wards and then colored them in on paper maps. I was  
3 doing that for the ACLU Southern Regional Office by the  
4 late '80s as well.

5 The ACLU of Virginia had filed a number of Section  
6 2 lawsuits in the late '80s in southside Virginia  
7 counties that had predominantly African American or  
8 significant African-American populations but no  
9 representation on county board of supervisors or school  
10 boards.

11 So there was a lot of litigation underway at that  
12 time. And because it was still the 1980s and the  
13 census had not provided digitized census maps for  
14 electronic analysis with computer mapping, all of that  
15 work was done with paper maps.

16 Q. So have you had any classes in demography?

17 A. Not specifically, no.

18 Q. Have you had any classes in statistics?

19 A. I have had statistics classes at Davidson, as  
20 well as a couple at Virginia Tech in the Urban Planning  
21 Program.

22 Q. About how many hours in statistics have you  
23 had?

24 A. I don't know. I don't do statistical analysis  
25 in my work. I mean, I did fine in them but I don't

Page 16

1 Q. Okay. And during from '91 to '98 you pretty  
2 much only did voting maps; is that right?

3 A. That's correct.

4 Q. Okay.

5 A. Yeah.

6 Q. What happened in 1998?

7 A. At that point the ACLU of Virginia had pretty  
8 much done all that could be done as it related to  
9 Section 2 lawsuits and anything related to mapping as  
10 it pertains to voting. So I left and just started  
11 working on my own out of my house.

12 And at that point I was still doing lots of maps  
13 'cause I was working for the ACLU Southern Regional  
14 Office and the Lawyers Committee for Civil Rights and  
15 other groups.

16 So that's what I've been doing since then. And  
17 I've not really worked on any project specifically for  
18 the ACLU of Virginia except a little bit around the  
19 spring of 2011. Most of my work has really been  
20 outside of Virginia.

21 Q. Okay. Would you -- is the ACLU your only  
22 client right now?

23 A. No. I do some work for Norfolk State  
24 University on some -- some on vetting but other matters  
25 as well. And I also do a lot of work for the Food

Page 15

1 really recall what -- I mean, the term hours, they were  
2 like semester courses.

3 Q. Okay.

4 A. So I had a semester at Davidson as part of the  
5 Economics Program, and I think I had a full year of  
6 statistics as it related to Urban and Regional Planning  
7 while I was at Virginia Tech.

8 Q. Okay.

9 A. I also studied under Brady Deaton at Virginia  
10 Tech. I just discovered about a month ago by chance  
11 that -- I was trying to think of if I could really  
12 remember anything of great value at Virginia Tech. And  
13 I recall having a class of agricultural economics at  
14 Virginia Tech taught by a professor named Brady Deaton.  
15 I said, I wonder whatever happened to Brady Deaton.  
16 Well, it turns out he became president of the  
17 University of Missouri and just recently retired.

18 Q. Uh-huh.

19 A. So that's my only connection with the  
20 University of Missouri.

21 Q. So you said you worked for the ACLU until  
22 about 1991?

23 A. Well, no, I worked for the ACLU until around  
24 1998, but I worked in a part-time capacity until 1991  
25 and then after that I worked full time.

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1 Research and Action Center, which is a nationwide  
2 policy organization on hunger and nutrition issues  
3 based in Washington, D.C.

4 Q. So what percentage of your work would you say  
5 is billed through the ACLU?

6 A. Through the ACLU right now, oh, maybe thirty  
7 percent. I work some for the national office. I mean,  
8 it really would vary from year to year. And some of my  
9 work is for the national office. But recently a lot of  
10 the hours and billing would have gone to state  
11 affiliates, as in the state of Washington, the ACLU.  
12 And I'm working on a case in Florida right now with the  
13 state of Florida ACLU. And Connecticut for that  
14 matter -- not Connecticut. Excuse me. Rhode Island.

15 Q. But all of those ACLU cases, that only makes  
16 up thirty percent of your work?

17 A. Well, it might be more than that once you add  
18 in -- I don't really know exactly. It might be more  
19 than that because -- and this year probably not much  
20 more than thirty percent. But last year for the  
21 Yakima, Washington, case, it was probably more than  
22 that.

23 Q. How many of the cases that you worked on have  
24 been on behalf of the Plaintiffs?

25 A. Most of them but not all. I have worked for

5 (Pages 14 to 17)



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1 counties in Mississippi and I'm currently -- and  
2 Louisiana, if memory serves me correct. I've worked on  
3 one case that involved East Carroll Parish. Police  
4 Jury it was called at the time. It may be a Parish  
5 Commission.

6 And presently I am working for the city of  
7 Decatur, Alabama, on a voting lawsuit there.

8 Q. So you're actually defending a Voters Rights  
9 Act, Section 2 case, that was brought against those  
10 entities?

11 A. No. Well, the Decatur, Alabama case is a -- a  
12 little odd. It was filed by a citizen of Decatur who  
13 believes that the city has to revert to a three  
14 district to at-large voting plan for the city council  
15 because there was an election in 2010, a referendum,  
16 where the citizens of Decatur voted to move to that  
17 sort of a system.

18 But the Department of Justice objected to that  
19 because it would have eliminated the single majority  
20 black district. And the city council has chosen not to  
21 try to create a plan that would switch from district to  
22 at-large. And because of that there is this lawsuit.

23 And it's seems to be in abeyance. I mean, I filed  
24 an expert report about a year ago but nothing much has  
25 happened since then. I'm not sure why.

Page 19

1 Q. How many voting plans would you guess that you  
2 had -- have prepared in your career?

3 A. Oh, thousands and thousands. I have no idea.  
4 My estimate is I worked in probably seven hundred and  
5 fifty different jurisdictions. Some of them would have  
6 just been a single plan drawn at the request of a  
7 community group or maybe the ACLU or a legal defense  
8 fund or someone like that. And one map would be  
9 produced and that would be the end of it. But then  
10 others just go on and on and on and on. I mean for  
11 years and years. And hundreds of, you know, dozens and  
12 dozens of plans are produced for a single jurisdiction  
13 for whatever reason.

14 Q. Have you ever worked on any other cases in  
15 Missouri?

16 A. I have not.

17 Q. When were you first contacted about this case?

18 A. In this particular case, it would have been  
19 late August of 2014.

20 Q. And who contacted you?

21 A. Dale Ho I believe. Dale Ho, H-O.

22 Q. And have you worked for him before?

23 A. I have.

24 Q. How many times?

25 A. Well, when I initially met Dale I -- he was

Page 20

1 working for the NAACP Legal Defense Fund. So I did  
2 some maps for him. And the cases that I am still  
3 involved in that he worked on would be the Terrebonne  
4 Parish Judicial case and Fayette County, Georgia,  
5 County Commission School Board case. And I did some  
6 other maps for him at that time while he was at LDF.  
7 Again, many of those may have just been one shot, like  
8 can you do this, we're looking into it. But those two  
9 cases come to mind. I may be overlooking something but  
10 that's where I first encountered Dale.

11 Q. Were you retained immediately upon the  
12 Plaintiffs contacting you?

13 A. No. No. I mean, I did some initial -- an  
14 initial draft plan and, I mean, at some point in the  
15 fall of 2014, I guess, I was retained.

16 Q. And do you have an agreement with regard  
17 to your compensation?

18 A. I do.

19 Q. And how much are you being paid?

20 A. It's a hundred and fifty dollars an hour for  
21 the work I do relating to Gingles I in this case.

22 Q. Have you submitted invoices to the ACLU?

23 A. I submitted a couple I think, yes.

24 Q. And have you been paid?

25 A. I have been paid. Actually I sent one for

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1 April to July about two weeks ago so I haven't really  
2 been paid for that one.

3 Q. Okay. So how many hours do you estimate  
4 you've billed on this case through July?

5 A. Well, it would be probably seven -- I'm just  
6 guessing. Probably seventy hours. Something like  
7 that.

8 Q. And what percent of your annual income would  
9 you say comes from expert testimony?

10 A. Maybe half.

11 Q. What's the other half derived from?

12 A. Well, again, I do a lot of maps that are  
13 unrelated to cases that are voting related district  
14 maps. Then I also have other little projects that are  
15 totally unrelated to voting per se, like my work with  
16 the Food and Research Action Center and some of the  
17 work I do for Norfolk State. And I also do some work  
18 for the Prison Policy Initiative. Some of that is  
19 voting related and some of it is not.

20 Q. Okay. How many voting plans have you prepared  
21 with regard to the Ferguson-Florissant School District?

22 A. Oh, well, there are two illustrative plans,  
23 and a couple of hypothetical plans. And I did  
24 variations on the two illustrative plans early on, in  
25 part because there was a different set of incumbents so

6 (Pages 18 to 21)

1 I had to make some adjustments to take that into  
2 account for the initial drafts in 2014. Of course, we  
3 used the incumbents who were in office prior to 2015  
4 election so probably eight or nine drafts, I'm just  
5 guessing, looking at different configurations.

6 Q. Are the plans that the Plaintiffs intend to  
7 rely on contained in your two reports?

8 A. Well, they rely on for Gingles 1. They would  
9 not necessarily be the remedy but just to show that we  
10 can meet Gingles 1.

11 Q. And the draft plans, there's not going to be  
12 any reliance on those as far as you're aware that  
13 aren't included in your reports?

14 A. I don't think so but they certainly could be.  
15 I mean, they were all plans that created four more  
16 majority black districts.

17 Q. Have you prepared any other plans that you  
18 intend to rely on at trial that have not yet been  
19 disclosed in these two reports?

20 A. No. I think we're just relying on those plans  
21 and maybe additional plans will be submitted for the  
22 remedy phase. But for now, I think it's just those two  
23 plans, the Illustrative 1 and Illustrative 2, and the  
24 hypothetical plans just to make certain points.

25 Q. Okay. Have you prepared or provided any

1 Q. How many times in the past have you drafted a  
2 plan that created a majority of districts where the  
3 minority has the most seats?

4 A. Oh, dozens, dozens, dozens probably. I  
5 wouldn't -- I wouldn't really have a figure off the top  
6 of my head but many.

7 Q. So based on your belief that African Americans  
8 aren't in a majority voting age population, shouldn't  
9 you have only created plans that had three  
10 single-member districts?

11 A. Well, I would argue that there is no evidence  
12 just yet that African Americans are a majority -- did  
13 you say majority or minority?

14 Q. I said based on your belief that African  
15 Americans are not a majority of the voting age  
16 population, shouldn't you have created three  
17 single-member districts?

18 A. Well, not really. Because they are a majority  
19 of the total population, so I would argue that there  
20 should be four. But you may argue differently and I  
21 will leave that up to the attorneys to make the legal  
22 arguments on that.

23 Q. Were any of the other -- any of your previous  
24 cases a situation where the minority population  
25 exceeded fifty percent?

1 information or data to Dr. Engstrom?

2 A. I provided him with population figures for the  
3 polling place precincts for the elections that were  
4 held in April 2011 through April 2015. Municipal  
5 elections -- or rather school district elections just  
6 for that month of April for each of those years.  
7 That's when the elections are held.

8 Q. And did you provide any data or information to  
9 Dr. Kimball?

10 A. To who?

11 Q. Dr. Kimball.

12 A. No, I'm not familiar with him.

13 Q. How about Dr. Gordon?

14 A. No.

15 Q. So the only other expert that you've provided  
16 information to is Dr. Engstrom?

17 A. As far as I know. I mean, that's the only  
18 other expert I've directly provided information to.  
19 Whether they've looked at something in my reports, I  
20 don't know.

21 Q. So you state that Plaintiffs' counsel asked  
22 you to create a plan with four single-member districts  
23 out of seven; is that right?

24 A. I think that's what I was initially asked to  
25 do, right.

1 A. Any other cases?

2 Q. Uh-huh.

3 A. Yes, I've been involved in other cases where  
4 the minority population exceeded fifty percent.

5 Q. Which ones?

6 A. Well, the Yakima, Washington, case for one.  
7 Not citizen but I believe -- well, I should back off on  
8 that. I may be wrong about that so I won't mention  
9 that one.

10 A number in Mississippi. East Carroll Parish was  
11 majority black if I'm not mistaken. Maybe there are  
12 not as many as I think. I'm drawing a blank. I'd have  
13 to think some more about that. But it's not totally.

14 Q. And we can go back and check these cases to  
15 verify that there's -- the minority population exceeded  
16 fifty percent.

17 A. Well, yeah, if you looked at all my cases you  
18 would find some that --

19 Q. -- I've looked at a lot of your cases and I  
20 haven't found any, so that's why I'm asking.

21 A. Oh, okay. Well, there's a Hattiesburg,  
22 Mississippi, case that we just lost even though we won  
23 on Gingles 1, 2, and 3. Hattiesburg is majority black.  
24 All persons as of the 2010 Census. That case will be  
25 appealed.



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1 You know, there have to be some and I'm almost --  
2 I'm pretty sure that East Carroll Parish is majority  
3 black, and I know Madison Parish in Louisiana is  
4 majority black.

5 Q. Okay.

6 A. Brunswick County, Virginia, is probably  
7 majority black now. Probably it was -- may have been  
8 in the 1990s but I'm not sure.

9 There are some out there. I just -- it's not  
10 something I've thought about recently.

11 Q. Okay. Prior to this case have you worked on a  
12 case where the majority voting age population exceeded  
13 fifty percent?

14 A. Yeah. Yes, I have.

15 Q. What happened in those cases?

16 A. Well, I mean, there are two I can think of  
17 specifically right now that -- now that I jog my memory  
18 a little bit there are two cases in Mississippi that  
19 are -- that have not even gotten to the point of filing  
20 summary judgments or whatever. Those two counties are  
21 Quitman and Coahoma County, and both of those counties  
22 the black population exceed fifty percent for both  
23 total and voting age.

24 Q. But there has been no decision in those cases?

25 A. No, no decision or trial or anything like

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1 Q. Okay. Well, this is a good point to enter  
2 your two reports into evidence so let's do that.

3 (Defendant's Exhibits A and B were marked for  
4 identification.)

5 Q. (By Ms. Ormsby) Could you turn to page --  
6 paragraph 9 of your initial report?

7 A. Paragraph 9?

8 Q. Uh-huh.

9 In this paragraph don't you state that the  
10 Plaintiffs' counsel asked you to rely on both the ACS  
11 and the census to compile your information?

12 A. Oh, that's true. I looked at the  
13 socioeconomic data because that's not really in the  
14 2010 complete count census. So I did rely on the  
15 socioeconomic data from the ACS for my initial report.  
16 You're exactly right.

17 Q. Did you use the ACS data for anything other  
18 than what you just stated?

19 A. In my initial report?

20 Q. Uh-huh.

21 A. Well, I mean, I printed out the full slate of  
22 data that is available from the 2011-2013 ACS. Most of  
23 it is socioeconomic but there is a breakout showing  
24 population estimates by race according to the 2011 ACS.  
25 It's in Exhibit D, I guess it is, but it's not

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1 that.

2 Q. Well, how many cases have you worked on where  
3 the minority voting age population -- well, never mind.

4 Did you use the American Community Survey for  
5 2011-13 to determine voting age population estimates by  
6 race?

7 A. Well, I did look at that. And I would argue  
8 that that's probably not the appropriate metric to use  
9 for Section 2 cases. But I am aware of that  
10 information and included it in my supplemental report.  
11 It's just under fifty percent. It's like -- single  
12 race around forty-eight percent. Forty-eight point  
13 nine eight four, I think. I'd have to look at my  
14 report to actually give you the exact figure but it's  
15 not quite above fifty.

16 Q. Did Plaintiffs' counsel ask you to rely on ACS  
17 and the census to compile your reports?

18 A. No. I did not rely on the ACS to report  
19 population figures for my initial report, I only looked  
20 at the ACS data in response to something that had been  
21 mentioned in Dr. Rodden's report. So I did look at  
22 black voting age under the 2011-2013 ACS, but it's a  
23 sample survey so it's, you know, I think the courts  
24 generally require jurisdictions to rely on the 2010  
25 Census.

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1 discussed in my report for purposes of population  
2 figures. I just discussed the socioeconomic data as  
3 general background.

4 Q. Have you used the ACS in past cases?

5 A. Yes. I frequently look at the socioeconomic  
6 data as part of my work. It's sort of tied in  
7 Gingles I and how you might consider drawing  
8 illustrative plans. But it's also one of the Senate  
9 Factors and so depending on the case I often produce  
10 and discuss the general figures without going into  
11 great detail. Usually if there's a lot of detail on  
12 socioeconomic differences, that's something that the  
13 Plaintiffs' attorneys would probably prefer to use a  
14 historian or someone else who's studied the community  
15 in great detail. So I'm basically just reporting the  
16 figures as they are reported by the Census Bureau.

17 Q. Have you used the ACS to determine citizen  
18 VAP?

19 A. I have. I have. In the Yakima case and in a  
20 few other cases.

21 Q. And you find it reliable?

22 A. It's an estimate. It's the only thing  
23 available. Unlike -- unlike the complete count 2010  
24 Census, which gives you a figure for the voting age  
25 population of a community and the total population by

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 race at the time of 2010 Census. The complete count 2 census does not provide a figure for citizen voting age 3 population. So in that instance the only data 4 available, and it's an estimate, is from the American 5 Community Survey.</p> <p>6 Q. How did you learn your methodology? 7 A. Methodology for what? 8 Q. For creating your maps, for making your 9 determinations.</p> <p>10 A. Well, it's just -- I went to college. I 11 understand how to do this stuff. I have not taken a 12 class in redistricting, if that's what you mean.</p> <p>13 Q. Has your method been reviewed by a 14 statistician?</p> <p>15 A. I don't think it's really necessary for a 16 statistician to review my method. I'm not aware of 17 one. But maybe. I mean, there are statisticians that 18 have been involved in every single case I've ever done 19 and sometimes they comment on Gingles 1 factors, so to 20 that extent, yeah, they've reviewed my methodology.</p> <p>21 Q. Has your methodology been peer reviewed? 22 A. No. I'm not an academic so I've never 23 submitted a paper for review.</p> <p>24 Q. So let's talk briefly about the 2010 Census. 25 If you could turn to Exhibit B of your initial report,</p>	<p style="text-align: right;">Page 32</p> <p>1 boundary of the school board -- of the school district 2 extends and picks up, for example, a few blocks in the 3 city of Black Jack.</p> <p>4 There's just like a little arm that reaches out. 5 That you can actually see it on Exhibit B. Two little 6 arms stretches out there sort of in the northeast, 7 along the northeast boundary in red. You probably 8 know -- you can probably go straight to the map and 9 find Black Jack. I mean, it's right here.</p> <p>10 Q. Yeah. 11 A. Yeah. So I don't know why that is. 12 But in the end, it really doesn't matter. The 13 differences between the Census Bureau definition and 14 the Board of Elections' definition is minuscule. It 15 amounts to less than one-tenth of one percent, I think, 16 for all of the racial categories.</p> <p>17 Q. Okay. So -- 18 A. I do not know why there's that discrepancy. 19 It's very unusual but that can happen.</p> <p>20 Q. So if we -- if you go down to the bottom of 21 that chart, the number for any part black is 22 thirty-seven thousand two hundred and twelve, which 23 makes up fifty-three point eight nine percent; is that 24 right? 25 A. Right. And I think the Board of Elections'</p>
<p style="text-align: right;">Page 31</p> <p>1 can you describe what the table is at the top of the 2 page?</p> <p>3 A. Exhibit B, which one would that be? 4 Q. The one you have marked Exhibit B in the back 5 of your report.</p> <p>6 A. Oh, yes, that's the official census tabulation 7 of the population in the Ferguson-Florissant School 8 District, which differs slightly from the boundaries 9 that are identified by the St. Louis County Board of 10 Elections. Very little difference. The percentages 11 are also identical but there are a few spots where the 12 Census Bureau's definition of the school district does 13 not line up perfectly with the St. Louis County Board 14 of Elections' school district boundary.</p> <p>15 Q. So in this chart you show that the 2010 total 16 population for the district is sixty-nine thousand 17 fifty. Is that right? 18 A. According to the U.S. Census Bureau, that's 19 right.</p> <p>20 Q. And that would be a hundred percent of the 21 population? 22 A. That would be a hundred percent of the 23 population, but the U.S. Census Bureau map is not a 24 perfect match to the St. Louis County Board of 25 Elections' map. For example, the Census Bureau map</p>	<p style="text-align: right;">Page 33</p> <p>1 figure is -- according to my analysis would be 2 fifty-three point eight four. So they're almost the 3 same.</p> <p>4 Q. Okay. Right. All right. If you could turn 5 to page 61 of your initial report -- or paragraph 61 I 6 bet.</p> <p>7 Paragraph 61. 8 A. Paragraph 61. 9 Q. You conclude in paragraph 61 under the first 10 bullet that the black voting age population has 11 increased over the last two decades.</p> <p>12 A. Yes, that's pretty obvious. 13 Q. And you conclude in your Figure 4 that the 14 population -- black voting age population has doubled 15 in the last twenty years; is that right? 16 A. In figure? 17 Q. Figure 4. 18 A. In Figure 4. That would probably be the case 19 but I will double check.</p> <p>20 Q. Figure 4 is on page? 21 A. Right, it is -- 22 Q. Ten? 23 A. Well, single race, it is -- oh, I'm looking at 24 VAP, excuse me. 25 Q. It's on page 10.</p>

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1 A. Oh, Figure 4. So you're talking about the  
2 voting age?  
3 Q. Uh-huh.  
4 A. Yes, it is almost -- almost doubled. Not  
5 quite.  
6 Q. Yet in paragraph 12 of your rebuttal report,  
7 you say the projections based on trend lines from prior  
8 years are highly speculative. So are you testifying  
9 that you think the trends from the last twenty years  
10 will reverse?  
11 A. I'm testifying giving the events of August  
12 2014 and following months, that it's really problematic  
13 to rely on trend lines because we just don't know what  
14 impact that's going to have on in-migration and  
15 out-migration.  
16 It might have been reasonable to think, even  
17 though it would have been speculative, that the trend  
18 lines would continue but we just don't know now.  
19 Q. Do you believe they'll reverse?  
20 A. I have no idea. It's a crap shot really.  
21 Who's going to move into the Ferguson and the  
22 Florissant area based on recent events? I mean, there  
23 may not be as much in-migration of the black population  
24 as there has been in past years. In fact, there might  
25 be black out-migration. So I just don't know. I just

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1 don't think you can make any kind of assessment at this  
2 stage of the game.  
3 Q. And are you aware of any housing reports  
4 within the last six months about what has happened in  
5 Ferguson as far as move-in rates?  
6 A. No, I have not analyzed that.  
7 Q. Okay.  
8 A. But you couldn't just look at Ferguson, you've  
9 got to look at eleven different communities.  
10 Q. Well, you just brought up Ferguson as a result  
11 of August 14th so I just wanted to --  
12 A. Right.  
13 Q. -- refer to Ferguson and housing reports --  
14 A. Right.  
15 Q. -- that came out within the last six months.  
16 A. Right. And you would have to look into the  
17 entire school district and portions of those  
18 communities that are -- the eleven communities that are  
19 in the school district.  
20 Q. I just want to take you through a few  
21 calculations and you're just -- please just bear with  
22 me. I just want to make sure that I'm understanding  
23 this.  
24 So if you look at Figure 4, from 1990 to 2000 what  
25 is the change in non-Hispanic white population?

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1 A. From 1990 to 2000?  
2 Q. I have a calculator here if you really want to  
3 look into it.  
4 A. From 1990 to 2000, the population that was  
5 non-Hispanic white, we're looking at voting age,  
6 dropped by about thirteen thousand, so.  
7 Q. So if you -- if you express that as a percent  
8 change, by dividing that forty-seven two ninety into  
9 that thirteen thousand, it comes out to be about  
10 twenty-seven point five percent; is that right?  
11 A. That sounds right to me.  
12 Q. Decrease?  
13 A. I'm not going to dispute that.  
14 Q. Then from 2000 to 2010 what is the change in  
15 the non-Hispanic white population VAP number?  
16 A. Well, again, it would be around twenty-five  
17 percent I think but I haven't calculated out to a  
18 precise figure.  
19 Q. Would it surprise you that the difference in  
20 population is nine thousand four hundred and twenty-two  
21 and when you figure out the rate change, it's exactly  
22 twenty-seven point five percent?  
23 A. No, it would not. Obviously I was not  
24 calculating that right. It is close to ten thousand.  
25 So, yeah, that doesn't surprise me.

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1 Q. Okay. So we agree, at least over this  
2 twenty-year period, it's been a quite steady decrease;  
3 would you agree?  
4 A. I would agree.  
5 Q. And then if you look at the single race black  
6 population, how did it -- much did it increase from  
7 1990 to 2000?  
8 A. Voting age?  
9 Q. Yes.  
10 A. It was under fifty percent -- oh, to 2000?  
11 Q. Uh-huh.  
12 A. Well, it increased by almost five thousand  
13 people, so I guess it was somewhere in the range of --  
14 in the forties.  
15 Q. Thirty-seven point five percent?  
16 A. Okay.  
17 Q. And then from 2000 to 2010 it increased by six  
18 thousand six hundred and eighty-two; would you agree  
19 with that?  
20 A. That looks right.  
21 Q. And for a percent increase of thirty-eight  
22 point five percent?  
23 A. That would be conceivable.  
24 Q. So the population, the single race black  
25 population, unlike the white decrease, it actually --

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 the black population was -- it accelerated from 2 thirty-seven point five percent to thirty-eight point 3 five percent? 4 A. Well, it was about the same. I mean, one 5 percentage point is not enough to really call 6 accelerating. But it was a rapid increase 1990 and 7 2010. 8 Q. So if we -- if we -- over that twenty-year 9 period, the black population increased about five 10 hundred per year; would you agree with that? 11 A. Well, I'm not sure if you can say it was -- on 12 average. 13 Q. On average? 14 A. On average. 15 Q. On average. I'll live with that. 16 So now we're in the summer of 2015 and we've 17 passed a midway point between decennial censuses; isn't 18 that right? 19 A. As of -- 20 Q. Right now? 21 A. -- right now at about the midpoint, uh-huh. 22 Q. And even if we take a conservative approach, 23 up until even -- we'll use the year 2014 before the 24 Michael Brown incident, we could assume based on the 25 previous twenty years that the white population is</p>	<p style="text-align: right;">Page 40</p> <p>1 couldn't or wouldn't but at this point I have not. 2 Q. So if you look at paragraph 7 of your 3 supplementary report, you state that according to the 4 2011-2013 ACS, which has a midpoint of 2012, that the 5 district's total VAP had already fallen to forty-nine 6 thousand six hundred and seventy-nine; is that right? 7 A. Paragraph? 8 Q. Seven. 9 A. Seven. Oh, well, I don't know if it's -- 10 again, you're comparing the ACS with the 2010 Census 11 count. I don't know whether it's fallen or not 12 compared to the -- say 2006-2010 ACS or 2008-2012 ACS. 13 Q. Do you agree with me that the number you put 14 in there for the total VAP is forty-nine thousand six 15 hundred and seventy-nine? 16 A. Well, that's true. That's true. 17 Q. Thank you. 18 A. According to the 2011-2013 ACS, which is a 19 sample estimate. 20 Q. And if you divide twenty-six thousand thirty 21 by forty-nine thousand, what would that be? 22 A. Twenty-six thousand thirty, where are you 23 getting that? 24 Q. Twenty-six thousand thirty is -- where am I 25 getting that? That's forty-nine thousand six hundred</p>
<p style="text-align: right;">Page 39</p> <p>1 going to decrease by about a thousand per year and the 2 black population is going to increase by about five 3 hundred a year? We can assume that? 4 A. We can't really assume that. You can look at 5 it retrospectively but we just don't know. We just 6 don't know. And we especially don't know given the 7 events of last year. 8 Q. I'm talking about up to 2014. 9 A. Well, you can make that assumption but we 10 really don't know. There's no evidence of it really in 11 the ACS as of 2012. I can tell you that. But the ACS 12 is a population sample so you have to take it with a 13 grain of salt anyway. 14 Q. I just lost my train of thought when you said 15 that. 16 Can you tell me what housing reports you reviewed 17 between -- in the Ferguson-Florissant School District 18 between 2010 and 2015? 19 A. I have not reviewed housing reports. I've 20 reviewed housing by owner occupied or rental status for 21 the 2010 Census and also using the ACS data, but I have 22 not looked at anything outside of those two data sets. 23 Q. So you haven't looked at house sales in 24 specific areas or anything like that? 25 A. I have not at this point. It's not to say I</p>	<p style="text-align: right;">Page 41</p> <p>1 and seventy-nine divided by two, would be about twenty 2 thirty -- twenty-six thousand thirty; is that right? 3 A. No. I mean, the figure I report there, single 4 race black population, according to the ACS estimate is 5 twenty-four thousand three hundred thirteen, which 6 would be forty-eight point nine four percent single 7 race black as of the July 2012 midpoint. So I don't 8 know where you get twenty-six thousand. 9 Q. In your analysis do you consider any part 10 blacks at all? 11 A. For what? 12 Q. For anything. For -- when you consider any 13 estimates as far as VAP. 14 A. Yes, in the 2010 Census. But there is no any 15 part figure available in the American Community Survey 16 as far as I know. 17 Q. So you have zero? You're counting -- you're 18 not counting them at all? 19 A. In this -- in this particular figure I am not 20 counting them. I am counting single race black, 21 including Hispanics. So if that figure were available, 22 it would be a little bit higher; although, I would 23 maintain it would still be under fifty percent because 24 there's about a one percentage point difference between 25 the single race black Hispanic population and the any</p>



<p style="text-align: right;">Page 42</p> <p>1 part black voting age population. So it is still going 2 to be slightly under fifty percent. 3 Q. We're going to go through those calculations 4 in a minute. 5 A. Well, they're absolutely correct but go ahead. 6 Q. But it is your firm testimony that the 7 twenty-year trend established in twenty-four of your 8 expert report has either ceased or reversed since that 9 date? 10 A. No one knows. No one knows. I'm not saying 11 it hasn't reversed, I'm saying we just don't know. 12 There's no evidence on the table that I've seen yet 13 that would suggest that it has continued. 14 Q. And it's your firm belief that single race 15 African Americans are currently less than fifty percent 16 of the district's voting age population? 17 A. Based on the 2010 Census, based on the 18 2011-2013 ACS, and, of course, if you look at the other 19 probative figure from the ACS, the citizenship VAP, 20 African Americans are under forty-eight. I think I've 21 got that figure in Figure 9, forty-eight point one two. 22 Q. And you're going to -- it's -- you're going to 23 stand by your belief that even if we included any part 24 African Americans, it would still be less than fifty 25 percent voting age population?</p>	<p style="text-align: right;">Page 44</p> <p>1 Survey still leaves you below fifty percent, and a 2 couple of percentage points below fifty percent if you 3 take into account the citizen voting age population. 4 Q. So if I'm hearing you right, paragraphs 5 and 5 6 of your expert report, the supplementary report, you 6 draw attention to the fact that the Census Bureau 7 cautions against using the ACS for population estimates 8 because, unlike decennial censuses, it is a rolling 9 sample that doesn't attempt to count everyone. Does 10 that summarize what you said? 11 A. Right. It's a sample based on a survey, 12 annual survey, that has a one out of forty respondent 13 rate. 14 Q. And it's your contention then that for 15 population counts we can only rely on the decennial 16 census? 17 A. Well, you can make -- you can go ahead and 18 make projections if you prefer. It's my understanding 19 that the courts generally only rely on the 2010 Census. 20 Q. Well, you're not aware of any court cases in 21 your experience as an expert witness where a court 22 looked at a trend? 23 A. It may look at a trend. I don't know. I have 24 not been involved in a case where a trend was discussed 25 and actually taken as a fact. As far as I know I've</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I believe so. That's my opinion. 2 Q. And that's as of 2015? 3 A. Well, no, I don't know what it is in 2015. I 4 can only rely on the published estimates from the 5 2011-2013 ACS. We won't know 2015 -- well, we're not 6 going to know 2015 until very late in the decade 7 because the three-year ACS is being eliminated this 8 year. So to get a figure for 2015 we will have to rely 9 on the 2012-2017 five-year ACS, which will not be 10 available until December of 2018. 11 Q. And you believe that professional demographers 12 would come to the same conclusion that you have? 13 A. Well, I -- what do you mean -- what do you 14 mean come to the same conclusion? 15 Q. That the voting age population of African 16 Americans have not increased? That we have to rely 17 totally on the 2010 and we can't look at any trends 18 going forward? 19 A. Well, you can make trends but they're going to 20 speculative because there's no documented evidence to 21 suggest or prove that there is a majority black voting 22 age population in Ferguson-Florissant School District 23 as of today. 24 The best we can come up with as a possible 25 estimate using the -- using the American Community</p>	<p style="text-align: right;">Page 45</p> <p>1 not been involved in a case like that. 2 Q. And you've not read any cases in which the 3 court relied on a trend? 4 A. I can't -- none come to mind. It's 5 conceivable but none come to mind. 6 Q. Okay. What if I wanted to count 7 African-American families living below poverty level or 8 living in a particular income category, can I use the 9 decennial census for that? 10 A. Well, I mean, we're mixing two different 11 things here. 12 Q. I'm just asking you a question. Can I rely on 13 the decennial census? 14 A. No. And I use the ACS for socioeconomic 15 analysis and the courts use the ACS for socioeconomic 16 analysis. I don't want to confuse things here. 17 Certainly I have reported, and in every case I've 18 ever been involved in probably, there has been a 19 discussion of socioeconomic characteristics of the 20 minority population involved vis-à-vis the non-Hispanic 21 white population. And in some cases, excuse me, as in 22 the -- I'm better. 23 MS. ORMSBY: Do you need some water? 24 THE WITNESS: Maybe coffee. 25 MS. ORMSBY: More coffee?</p>

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1 THE WITNESS: Yeah, that would be better.  
 2 MS. ORMSBY: Do you take it black or?  
 3 THE WITNESS: With a little cream.  
 4 A. May I proceed?  
 5 Q. (By Ms. Ormsby) Sure.  
 6 A. Well, yeah, in some cases it's not just a  
 7 single race black population or single race American-  
 8 Indian population. There are different minority  
 9 populations involved.  
 10 For example, in Albany County, New York, in a case  
 11 I was involved in I actually reported statistics for  
 12 the African-American population and for the Latino  
 13 population. Because there's a significant Latino  
 14 population in Albany County, New York.  
 15 Q. So you're saying we can trust all of the  
 16 various population counts reported in the body of your  
 17 initial report as well as in your Appendix D, which are  
 18 all of those charts, we can -- we can trust all of  
 19 those numbers? That we can rely on all of those  
 20 numbers except for page 6 of Exhibit D, which is the  
 21 sex by age?  
 22 A. Well, you can rely on it but it is an  
 23 estimate. It's not a complete count. And again, it's  
 24 under fifty percent so at this point there's no issue  
 25 there. The African Americans are still not a majority

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1 of the voting age population of the Ferguson-Florissant  
 2 School District as reported in the 2011-2013 ACS.  
 3 Q. So we can rely on it as long as it agrees with  
 4 your narrative?  
 5 A. No. I mean, in 2017 or whatever, 2018, when  
 6 the 2015 midpoint becomes available, you can certainly  
 7 report that. Whether the court takes that into  
 8 consideration or not, I don't know.  
 9 Q. Why don't you turn to page 8 of your Exhibit  
 10 D, which is in your first report.  
 11 A. Exhibit what?  
 12 Q. D. Page 8. The numbers are at the bottom of  
 13 the page of Exhibit D.  
 14 A. Exhibit D.  
 15 Q. Eight of forty-six.  
 16 A. Oh, okay.  
 17 Q. So you're comfortable making claims in the  
 18 table of page 8 about the number of African American  
 19 and whites who moved from a different state or from  
 20 abroad --  
 21 A. Well, I'm not making --  
 22 Q. Let me finish.  
 23 A. Okay.  
 24 Q. But you're not comfortable making claims about  
 25 the total number of African Americans over the age of

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1 eighteen? I just want to clarify that. You're  
 2 comfortable?  
 3 A. I'm just -- I'm comfortable reporting what the  
 4 ACS reports. I'm not making any claim. This is just  
 5 the official data that is reported by the American  
 6 Community Survey. And the official data reported by  
 7 the American Community Survey now shows that as of July  
 8 2012, African Americans were still not a majority of  
 9 the voting age population.  
 10 Q. Isn't it a little odd that since the African  
 11 Americans over the age of eighteen is a rather large  
 12 category and the ACA (sic) sample, that that -- because  
 13 it's such a large category that the ACS sample should  
 14 be rather reliable?  
 15 A. Is it odd?  
 16 Q. Don't you feel like it's -- because it's such  
 17 a large group -- this is a very, very small group, six  
 18 hundred and ninety-six and five African Americans moved  
 19 either from a different state or from abroad? That's a  
 20 very, very small group that the ACS is reporting on  
 21 that you include in your report; whereas, the African  
 22 American black population is very large, that's not  
 23 something we can --  
 24 (Interruption.)  
 25 A. Well, you're right that the margin of error is

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1 greater the smaller the component, so it's less  
 2 reliable.  
 3 Q. (By Ms. Ormsby) Let's look at paragraph 6 of  
 4 your supplemental report. This paragraph disavows the  
 5 use of samples to make population estimates and states  
 6 it should be read as a general expression of skepticism  
 7 about the use of the three-year ACS to estimate  
 8 population estimates; is that correct?  
 9 A. Right. I mean, because at this point the ACS  
 10 has a July 1, 2012, survey midpoint. So that's pretty  
 11 close to 2010. So after taking in the margin of error  
 12 into account, the margin of error, among other things,  
 13 you know, there's really no compelling reason to rely  
 14 on the 2012 ACS for total population counts in my mind  
 15 for other purposes for other metrics that are not  
 16 included in the 2010 Census. Like citizenship, like  
 17 socioeconomic characteristics, poverty and other  
 18 things. If you're going to report any figure at all  
 19 you have to rely on the ACS. So in those cases it  
 20 would be the best available information.  
 21 Q. But you didn't put this caveat in your initial  
 22 report that the ACS should be looked at skeptically?  
 23 You didn't warn your reader about the estimates -- that  
 24 they're estimates in your initial report which contains  
 25 a lot of information from the ACS; is that right?

13 (Pages 46 to 49)



1 A. Well, first of all, I never discussed the ACS  
2 population data in my report at all, I discussed the  
3 socioeconomic data. So there was no reason to put that  
4 warning in there. I just included all of the tables I  
5 could find that had some comparison of non-Hispanic  
6 whites and African Americans. And that included those  
7 population tables, but they're not discussed in my  
8 report. The socioeconomic characteristics are. Maybe  
9 not completely. I didn't go through it table by table,  
10 I just hit some of the high points. But I'm not -- I  
11 was in no way trying to hide something, it just didn't  
12 seem to be of consequence.

13 Q. Going back to your initial report, Figure 4,  
14 you've established that the population of the district  
15 is rapidly transforming in those twenty years?

16 A. Right. I don't dispute that.

17 Q. And in the context of quickly changing  
18 demographics, shouldn't the goal be to have the most  
19 recent data?

20 A. Well, you know, I have the most recent data.  
21 I have reported the 2011-2013 ACS.

22 Q. Could you have used the five-year ACS to  
23 provide all the figures in the table?

24 A. I could have but I did not -- well, actually,  
25 the -- no. The five-year ACS, 2009-2013, had a survey

1 identification.)

2 Q. (By Ms. Ormsby) I'm marking what's been  
3 marked as Exhibit C. And this is from the government  
4 census website, correct?

5 A. I assume so, right.

6 Q. It says at the top when to use one-year,  
7 three-year, or five-year estimates; is that right?

8 A. That's what it says.

9 Q. And they're talking about the American  
10 Community Survey, right?

11 A. Yes.

12 Q. All right. Can you look down near the bottom  
13 under the three-year estimates best used when. What  
14 does it say when it's best to use the three-year ACS?

15 A. Well, it says best used when -- it's more  
16 precise than one year. Well, there is no one year --

17 Q. -- I just want you to read what it says,  
18 please.

19 A. Oh. "More precise than one year and more  
20 current than five year analyzing smaller populations,  
21 examining smaller geographies, because one-year  
22 estimates are not available."

23 Q. Okay. So wouldn't you agree that this box  
24 adequately describes the goals you had in writing your  
25 initial report, which is why you choose to rely on the

1 midpoint of 2011 so I could have used that and the  
2 margins of errors would be less.

3 Q. And would that have been more reliable because  
4 of the larger sample size than the three-year ACS?

5 A. For that particular year, yes, it would have  
6 been more reliable than, say, the 2010-2013 ACS.  
7 That's true. But the difference is, between the  
8 2009-2013 ACS and the 2011-2013 three-year ACS, when  
9 you're looking at socioeconomic data, which is really  
10 why I included those tables, are probably not of  
11 consequence. I mean, there will be differences but I  
12 would be able to make the same point whether I used  
13 2009-2013 or 2011-2013.

14 Q. And what about when you're reporting on things  
15 like poverty and home ownership, could you have used  
16 the five-year report for that?

17 A. I could have. That's the point I was making.  
18 I could have. I chose to use the 2011-2013, but I  
19 could have used 2009-2013. I often do.

20 See, in many -- in many localities where I work  
21 there's a cutoff point of twenty thousand people, so  
22 you have to use a five-year ACS because the 2011-2013  
23 ACS is not available for jurisdictions that are under  
24 twenty thousand.

25 (Defendant's Exhibit C was marked for

1 three-year ACS?

2 A. No. I used the three-year ACS because it was  
3 there. But I could have very easily used the five-year  
4 ACS. In fact, I have used the five-year ACS for a  
5 couple of the maps that are included in -- or at least  
6 one of the maps that is included in my first report  
7 because of the block group level. You have to use the  
8 five-year estimate, the median income map.

9 Q. But the vast majority of your initial report  
10 you chose to use the three-year; is that right?

11 A. I used it, that's right, but I could have used  
12 the five-year. I have that data. I could have  
13 produced charts just like this under the five-year data  
14 estimates.

15 Q. Okay. Let's look up a little bit. For what  
16 areas of population size does the census department  
17 tell us we should use the three-year data?

18 A. It says for areas with populations of twenty  
19 thousand plus. But I will say that because of the  
20 margins of error and sample issues, in many instances  
21 jurisdictions that are, say, between twenty thousand  
22 and fifty thousand often have data suppressed for the  
23 three-year estimates. So that if you really want to  
24 get a full slate of charts, you have to use the  
25 five-year estimates because then you get everything.

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1 For example, I do not believe in my -- in my  
2 initial set of charts using the three-year estimates, I  
3 don't think there's a citizenship breakout for African  
4 Americans. I could be wrong about that. Let me  
5 refresh my memory. Don't believe so. But if you had  
6 gone to the five-year charts, you would have gotten the  
7 ACS estimates by race block for citizenship.

8 Q. All of those charts in the back of your  
9 initial report are from the three-year; is that right?

10 A. They're from three-year but the point is --

11 Q. -- Okay.

12 A. Okay. Yeah.

13 MR. McDONALD: Let him finish answering the  
14 question.

15 A. The point is that as you go down below  
16 sixty-five thousand -- as you go down below sixty-five  
17 thousand, the issue of data suppression becomes greater  
18 and greater as you approach twenty thousand. So at  
19 some point for jurisdictions, say they're between  
20 twenty and forty thousand, it's probably better to use,  
21 if you want to get all the data, the five-year data  
22 set, even though you could get the three-year data set.

23 Q. So --

24 A. -- In this case because the only -- the only  
25 variable, I believe, that was suppressed was black

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1 table to use or the best ACS selection of data, but  
2 it's available. But I don't know why we're arguing  
3 about this, really, because I used the three-year  
4 estimates. I'm not disputing that.

5 Q. And there's -- the district has more than  
6 twenty thousand residents?

7 A. It does, yes.

8 Q. And it has more than twenty thousand black  
9 residents?

10 A. It does.

11 Q. And in paragraph 61, your second bullet of  
12 your initial report, you rely -- wait for you to get  
13 there. It's on page 28.

14 A. Oh, okay.

15 Q. You rely on the 2011-2013 ACS to determine  
16 that whites outpace African Americans in most  
17 socioeconomic measures, right?

18 A. That's true.

19 Q. And you believe your conclusions are reliable?

20 A. Well, that's what is reported in the ACS based  
21 on the survey sample and so I do think that it is  
22 reliable.

23 Q. In paragraph 7 of your supplemental report you  
24 point out the district has a total VAP of forty-nine  
25 thousand six hundred and seventy-nine? On paragraph 7.

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1 citizenship, I went ahead and used the three-year  
2 table, just because citizenship really isn't an issue  
3 in this case.

4 Q. You used the three-year table for everything  
5 in your initial report, right?

6 A. I did, yeah.

7 Q. Okay. And --

8 A. -- I don't understand your point.

9 Q. Just to be --

10 A. Go ahead.

11 Q. Just to be clear, the sixty-five thousand is  
12 for one-year estimates. The population of sixty-five  
13 thousand plus is for one-year estimates, not -- right?

14 A. Right.

15 Q. And this, according to the government census  
16 bureau, data for areas of population of twenty thousand  
17 plus, that's what it says, correct? There's no --  
18 that's what it says; isn't that right?

19 A. What do you mean that's what it says?

20 Q. Data for areas with populations of twenty  
21 thousand plus.

22 A. That's -- that's where you can get the  
23 three-year ACS.

24 Q. Great.

25 A. They're not saying that's necessarily the best

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1 A. Uh-huh.

2 Q. Of them, forty-eight point nine percent are  
3 single race black?

4 A. Correct.

5 Q. And single white VAP, including Hispanics, is  
6 forty-seven point two four percent of the population,  
7 right?

8 A. Correct.

9 Q. So just to be clear, it's your testimony that  
10 single race blacks are the largest racial group in the  
11 Ferguson-Florissant School District?

12 A. Based on the 2011-2013 ACS, which is a sample  
13 estimate which at this point may not be more reliable  
14 than the 2010 Census. Because the 2010 Census is a  
15 complete count and it gives us these same figures;  
16 whereas, with the socioeconomic data and the  
17 citizenship data, that information is not available  
18 through the 2010 complete count. So it would be the  
19 most reliable data that we have to use, either the  
20 2011-2013 ACS or the 2009-2013 five-year ACS.

21 Q. You didn't -- you didn't give us those numbers  
22 in your report though, did you?

23 A. Which numbers?

24 Q. The numbers you just said. That the five-year  
25 report would have been better. You didn't give us the

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 five --</p> <p>2 A. -- What do you mean I said it would have been</p> <p>3 better?</p> <p>4 Q. What did you just say?</p> <p>5 A. Well, I don't know. I have to read back.</p> <p>6 What I said was that the 2010 Census at this point in</p> <p>7 time is probably more reliable than the 2011-2013 ACS</p> <p>8 which has a July 1, 2012, midpoint but is based on a</p> <p>9 sample survey of one out of forty persons roughly in</p> <p>10 the American population in any given year.</p> <p>11 But I am saying that if you want to look at</p> <p>12 socioeconomic data, if you want to get a rough</p> <p>13 approximation of citizenship data, then it is okay to</p> <p>14 rely on either the 2011-2013 ACS or the 2009-2013 ACS</p> <p>15 which would have a smaller margin of error.</p> <p>16 And in the case of the Ferguson-Florissant School</p> <p>17 District, because there's data suppression in the</p> <p>18 2011-2013 ACS for African-American citizenship rights,</p> <p>19 you absolutely have to rely on the 2009-2013 ACS.</p> <p>20 Q. But you agree that your conclusion what you</p> <p>21 write in paragraph 7 of your rebuttal report, despite</p> <p>22 the caveat that you just stated, that the</p> <p>23 Ferguson-Florissant single race VAP, black VAP, is</p> <p>24 larger than the white, non-Hispanic white VAP, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 60</p> <p>1 of the VAP, but you really mean single race blacks are</p> <p>2 not a majority of the VAP, correct?</p> <p>3 A. That's -- that's true.</p> <p>4 Q. Do you believe that individuals that have one</p> <p>5 white parent and one black parent or even those with</p> <p>6 three black parents and one white grandparent should be</p> <p>7 counted as black?</p> <p>8 A. Well, it's up to the individual respondent in</p> <p>9 the census to make that determination.</p> <p>10 Q. But it makes sense to characterize Barrack</p> <p>11 Obama as black?</p> <p>12 A. Yes. I understand he identifies as -- I think</p> <p>13 I heard somewhere that he identifies single race black.</p> <p>14 But he could have selected black and white and that</p> <p>15 would have been considered any part black or single</p> <p>16 race non-Hispanic DOJ black, which counts anyone who's</p> <p>17 black and white as black.</p> <p>18 Q. And you don't dispute that your Footnote 3 on</p> <p>19 page 6 of your initial report states that any part</p> <p>20 black is the preferred definition?</p> <p>21 A. Footnote 3 of my initial report? Oh.</p> <p>22 Q. Page 6 of your initial report, Footnote 3.</p> <p>23 A. Well, it's certainly an acceptable definition.</p> <p>24 Is it appropriate census classification?</p> <p>25 Q. It's appropriate.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. And then in your next paragraph you</p> <p>2 state that even though they're a large group they're</p> <p>3 not the majority, correct?</p> <p>4 A. That's correct. According to the 2011-2013</p> <p>5 ACS.</p> <p>6 Q. But whites also are not a majority; is that</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. So no group constitutes a majority VAP under</p> <p>10 this?</p> <p>11 A. That would appear so from the 2011-2013 ACS.</p> <p>12 Q. And you reach this conclusion because we're</p> <p>13 leaving aside all the people over eighteen who claim to</p> <p>14 be -- report to be more than one race, right? The</p> <p>15 people who claim to be more than one race are not</p> <p>16 included in these numbers; would you agree with that?</p> <p>17 A. I did not arrive at a calculation for the any</p> <p>18 part black VAP because it is not reported in the</p> <p>19 2011-2013 ACS data.</p> <p>20 Q. So your statement in eight, it really should</p> <p>21 read: Single race blacks are not a majority? Not</p> <p>22 blacks are not a majority? Because we're not including</p> <p>23 AP blacks in these numbers; is that right?</p> <p>24 A. Which statement are you referring to?</p> <p>25 Q. Paragraph 8, you say blacks are not a majority</p>	<p style="text-align: right;">Page 61</p> <p>1 A. It's appropriate in most instances, I think,</p> <p>2 except that in some -- in some instances where there</p> <p>3 are significant other minority populations, it might</p> <p>4 not be appropriate.</p> <p>5 Q. Are there --</p> <p>6 A. -- For example, in South Florida it's probably</p> <p>7 better to use non-Hispanic black and Hispanics as</p> <p>8 separate categories and not include Hispanic blacks</p> <p>9 necessarily as part of the black population.</p> <p>10 Q. Is that true in Ferguson-Florissant?</p> <p>11 A. In Ferguson-Florissant there are so few</p> <p>12 Hispanic blacks that it just doesn't really matter.</p> <p>13 Q. Okay.</p> <p>14 A. And I would include Hispanic blacks as part of</p> <p>15 the black population in Ferguson-Florissant.</p> <p>16 Q. Okay. So let's go back to paragraph 7 of your</p> <p>17 rebuttal report. And using the caveat that you don't</p> <p>18 believe the ACS are the best numbers to use, yet we're</p> <p>19 using the numbers that you are supplying in</p> <p>20 paragraph 7, you say that the VAP of the district is</p> <p>21 forty-nine thousand six hundred and seventy-nine. And</p> <p>22 if I --</p> <p>23 A. -- I'm sorry, which?</p> <p>24 Q. Paragraph 7 of your rebuttal report.</p> <p>25 A. Oh.</p>

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1 Q. On page 4.  
 2 A. Right.  
 3 Q. Okay. Forty-six -- forty-nine thousand six  
 4 hundred and seventy-nine is what the VAP is of the  
 5 district, right?  
 6 A. Right.  
 7 Q. And if I divide that number in half, I get  
 8 twenty-four thousand eight hundred and thirty-nine  
 9 point five. So would you agree that using this number,  
 10 that twenty-four thousand eight hundred and forty would  
 11 constitute a majority?  
 12 A. Of the sample estimate, I think that's right.  
 13 I'm not doing the calculation in my head.  
 14 Q. All right. And you state that the single race  
 15 African American is twenty-four thousand three hundred  
 16 and thirteen. So single race African Americans are  
 17 short of a majority by five hundred and twenty-seven;  
 18 would you agree with that?  
 19 A. According to the sample estimate, right.  
 20 Q. And it's also the case that you classify  
 21 single race white -- that the single race white -- the  
 22 numbers that you give here though for single race white  
 23 and single race black does not include everybody?  
 24 A. That's right. I do not break out Hispanic  
 25 whites in that figure.

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1 Q. So if we add the twenty-four thousand three  
 2 hundred and thirteen single race black number to the  
 3 twenty-three thousand seven hundred and forty  
 4 non-Hispanic white VAP number, we get a total of  
 5 forty-eight thousand fifty-three. Which is short by  
 6 sixteen twenty-six of the overall VAP of forty-nine  
 7 thousand six hundred and seventy-nine.  
 8 There's a calculator there if you want to check  
 9 the math.  
 10 A. I'll take your word for it.  
 11 Q. Okay. So there's a sizable group of VAP  
 12 that's not classified as either single race white or  
 13 single race black?  
 14 A. Or single race black and non-Hispanic white.  
 15 I said that there was not a calculation in that  
 16 paragraph for non-Hispanic white VAP but actually there  
 17 is. So it's a few hundred less than the twenty-three  
 18 seven four oh who are white and that would include  
 19 Hispanics.  
 20 Q. So three point three percent of the VAP aren't  
 21 classified as single race black or single race white?  
 22 A. I'll -- forty-six point seven eight are white,  
 23 non-Hispanic white, and forty-eight point nine four are  
 24 Hispanic blacks, some of whom may be Hispanic, so what  
 25 is that? I think it's a little higher than three

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1 percent.  
 2 Q. Okay.  
 3 A. Isn't it?  
 4 Q. I have three point three percent.  
 5 A. Forty-six -- well, forty-seven and forty-nine  
 6 would be --  
 7 Q. -- There's a calculator right there.  
 8 A. So it's going to be more than four percent.  
 9 Q. Okay. And it's not your belief that those one  
 10 thousand six hundred and twenty-six people, that  
 11 there's -- some of them are going to be any part  
 12 African American, correct?  
 13 A. That's true.  
 14 Q. So let's go to your initial report page --  
 15 your Exhibit D -- page 2 of your Exhibit D in the  
 16 big -- in your initial report.  
 17 A. Page 2 of Exhibit D?  
 18 Q. Page 2 of Exhibit D. Let me know when you're  
 19 there.  
 20 A. Okay.  
 21 Q. According to this table how many people in the  
 22 Ferguson-Florissant School District report two races?  
 23 A. This is not voting age.  
 24 Q. I agree.  
 25 A. Two thousand and forty-three.

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1 Q. I understand it's not voting age.  
 2 A. I'm sorry, that's -- yeah, two thousand  
 3 forty-three.  
 4 Q. Right.  
 5 A. Correct.  
 6 Q. And how many people report to be both black  
 7 and white?  
 8 A. One thousand one hundred and eighty-three.  
 9 Q. And how many people report to be black and  
 10 American Indian or Alaskan?  
 11 A. One hundred and seventeen.  
 12 Q. Now, I would -- black or African American,  
 13 three hundred and eighty-one?  
 14 A. I'm sorry. Three hundred and eighty-one.  
 15 You're right.  
 16 Q. So if we add these up, we get one thousand  
 17 five hundred and sixty-four. So the vast majority  
 18 of -- I understand this is just population. The vast  
 19 majority of people reporting two or more races include  
 20 black or African American as one of those two  
 21 categories, right?  
 22 A. That's true.  
 23 Q. Over three-quarters of them?  
 24 A. About three-quarters.  
 25 Q. Okay. And isn't it true that the 2011-13 ACS

17 (Pages 62 to 65)



Page 66

1 tells us that the vast majority of the people who  
 2 report two or more races report themselves as being at  
 3 least one-half black or African American in the ACS?  
 4 A. One thousand one hundred and eighty-three. So  
 5 that is a little bit over fifty percent, that's right.  
 6 Of persons who report two races.  
 7 Q. So now let's go back to the voting age data  
 8 from the ACS in your paragraph 7 and 8. We know the  
 9 overall population that the overwhelming majority of  
 10 people, the five hundred and twenty-seven people not  
 11 classified as either white or black, we know --  
 12 A. -- Where are we now?  
 13 Q. Going back to your conclusions about -- on  
 14 seven and eight of your supplemental?  
 15 A. Uh-huh.  
 16 Q. I know. We're going back and forth but this  
 17 is the only way I could figure out how do it.  
 18 Recall that there were --  
 19 A. -- And which paragraph?  
 20 Q. I'm in six, seven, and eight mainly.  
 21 A. Okay. Okay.  
 22 Q. Recall we did the calculations that there were  
 23 one thousand six hundred and twenty-six people not  
 24 classified, and when we -- and we also determined that  
 25 five hundred -- the blacks fell short of a majority

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1 status by five hundred and twenty-seven. We know that  
 2 the overall population is overwhelmingly a majority of  
 3 such people -- or classify themselves as part African  
 4 American?  
 5 A. Overwhelmingly majority of what?  
 6 Q. Of people who report themselves as two races  
 7 classify themselves as African American.  
 8 A. Some part African American. So three-fourths.  
 9 Roughly three-fourths.  
 10 Q. So you concluded that African Americans are  
 11 not a majority of the VAP. So you're stating that of  
 12 those one thousand six hundred and twenty-six people,  
 13 fewer than five hundred and twenty-seven are African  
 14 American -- part African American? That's your  
 15 conclusion, right?  
 16 A. Well, first of all, you're using total  
 17 population, not voting age population.  
 18 Q. To determine an overall percentage of part  
 19 African American, and I'm applying that overall  
 20 percentage to this number here, you're right, I am.  
 21 I'm trying to get --  
 22 A. Yeah.  
 23 Q. -- some sort of a ratio number here.  
 24 A. Yeah.  
 25 Q. So I just -- I just want to know, are you

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1 stating that you do not believe that at least five  
 2 hundred and twenty-seven of that sixteen hundred people  
 3 are not part African American, based on these  
 4 statistics that we just went through?  
 5 A. You mean the five hundred and some of the two  
 6 thousand people?  
 7 Q. Yeah.  
 8 A. Wait a minute. You got me --  
 9 Q. -- Sixteen twenty-six, that's the number  
 10 between -- that's the number of people that are not  
 11 identified in your numbers as either black, all black,  
 12 or all white.  
 13 A. Uh-huh.  
 14 Q. There's sixteen hundred and twenty-six people  
 15 in there.  
 16 A. Uh-huh.  
 17 Q. We only need five hundred and twenty-seven of  
 18 those to be part African American for the African  
 19 Americans to be the majority VAP. Are you saying that  
 20 based on the overall population statistics applied then  
 21 to this number, that there's no way that five hundred  
 22 and twenty-seven of them are African American or part  
 23 African American?  
 24 A. Well, you really can't apply the overall  
 25 statistics to the voting age population. The reason

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1 being is that with each successive generation the any  
 2 part multi-race category is increasing. So it's  
 3 totally inappropriate to apply a factor from a total  
 4 population to the voting age population. The only  
 5 reliable way to do that would be to look at the 2010  
 6 Census and apply that factor, which is only about fifty  
 7 percent as opposed to seventy-seven percent or whatever  
 8 it is.  
 9 Q. So -- okay. Let me see if I'm understanding  
 10 you right then. So your assertion that blacks do not  
 11 make up a majority of the VAP rests on one or two -- or  
 12 of two assumptions.  
 13 The first assumption is people who report one of  
 14 two races as black shouldn't be counted in VRA cases.  
 15 Or two, there's something radically different about the  
 16 overall population and the VAP with respect to people  
 17 who report multiple races.  
 18 Which one is it?  
 19 A. What is your question again? I'm not --  
 20 Q. Which assertion? I mean, it's either --  
 21 A. -- My assertion is simple. The American  
 22 Community Survey does not report in any part  
 23 calculation for the voting age population. So I have  
 24 given you a figure of forty-eight point nine four  
 25 percent, which includes single race blacks. We simply

18 (Pages 66 to 69)

1 don't know what the estimate is for the any part  
2 definition. That is not reported by the census so you  
3 then have to make some assumptions.

4 And to assume that the ratio of any part blacks  
5 for the voting age population is the same as the ratio  
6 for the total population is just flawed because that  
7 ratio will not be the same. It's going to always --  
8 and at least in most instances, be higher for the any  
9 part all age population than the any part VAP  
10 population. Because there are more mixed marriages  
11 with each successive generation, generally speaking.  
12 And that appears to be the case in Ferguson-Florissant  
13 as well.

14 Q. Going back to your table, page 2 of Table D.  
15 And I'll just show you mine so you don't have to go  
16 back and find it again.

17 If we add up those who report to be African  
18 American -- no, I can't see it upside down. I thought  
19 I could do this.

20 Okay. Those who say they're black -- of the  
21 population of two races, black -- white and black or  
22 African American, that's one point eight percent,  
23 correct?

24 A. Of two races according to the ACS.

25 Q. Yes. And if you go down and the blacks or

1 African American compared to the 2010 total population  
2 where it's around seventy-five percent. And you should  
3 be using the fifty-five percent, not the seventy-five  
4 percent.

5 If you use fifty-five percent, it comes in just  
6 under fifty percent.

7 Q. Forty-nine point eight?

8 A. Roughly.

9 Q. Okay. But we at least agree on this, I hope.  
10 That paragraph 7 of your rebuttal report doesn't take  
11 in any part blacks into account at all?

12 A. No, it doesn't. But if it did, if I were to  
13 speculate and make a rough estimate, I would say it is  
14 about forty-nine point eight percent. And I stand by  
15 that estimate.

16 Q. Okay. And do we also agree that there are  
17 other ethnic groups besides any part African Americans  
18 that are represented in the Ferguson-Florissant School  
19 District? There are Asians. There are Hispanic.  
20 There are Indians. We do -- you acknowledge that there  
21 are some population that are minority, correct?

22 A. That's true. That's absolutely correct. Both  
23 based on the 2010 Census, which is a better number to  
24 use, and this estimate from the 2011-2013 ACS.

25 Q. And when you made your rough estimate of

1 African Americans -- there are black or African  
2 American or American Indian or Alaskan native, that's  
3 point six percent, correct?

4 A. Correct.

5 Q. If we add those together, it's two point four  
6 percent?

7 A. Correct.

8 Q. Okay. So some part African Americans make up  
9 two percent -- two point four percent of the overall  
10 population, but you're stating that of that two point  
11 four percent not even one percent would be over  
12 eighteen?

13 A. Well, if you want me to give you a ballpark  
14 estimate of what I think the any part ACS black VAP  
15 according to the 2011-2013 survey is?

16 Q. Uh-huh.

17 A. I believe it's just around forty-nine point  
18 eight percent. And I'm basing that on similar analysis  
19 that you've conducted and applying what is the true  
20 factor, which is based on the 2010 Census, which shows  
21 that approximately fifty-five percent of the voting age  
22 any part African American population is -- wait, I'm  
23 confusing myself now.

24 But in that subcategory of persons who are of two  
25 races, approximately fifty-five percent are any part

1 forty-nine point eight percent, did you take into  
2 that -- that population into account at all in your  
3 calculation?

4 A. No. I suspect that if you looked at the  
5 minority voting age population, all races, not just any  
6 part black, that it would be just above fifty percent.

7 Q. Okay. Okay.

8 MS. ORMSBY: I think I'd like maybe 11:30 to  
9 break for lunch and then I don't think I'll have that  
10 much after lunch.

11 Does anybody need a break?

12 MR. McDONALD: Want to take a break?

13 A. No, I want to keep going. I just want to get  
14 out of here. I'm just kidding. I don't care.

15 MS. ORMSBY: I don't need a break. I just  
16 want to make sure no one else does.

17 A. I don't care.

18 MS. ORMSBY: Speak up. Okay.

19 MR. McDONALD: Can I get some water?

20 MS. ORMSBY: Absolutely.

21 (Short break.)

22 Q. (By Ms. Ormsby) You're going to have to help  
23 me on this one and I'm really dead serious. Can you  
24 explain Reock to me?

25 A. Explain what?



<p style="text-align: right;">Page 74</p> <p>1 Q. Reock?</p> <p>2 A. Reock.</p> <p>3 Q. Uh-huh.</p> <p>4 A. Oh, oh, that's a compactness measure that has</p> <p>5 been accepted by the courts to determine for</p> <p>6 comparative analysis compactness.</p> <p>7 Q. And how do you calculate it?</p> <p>8 A. Just read that footnote. I can't tell you off</p> <p>9 the top of my head.</p> <p>10 It's calculated automatically by maptitude. I</p> <p>11 used to almost never use it but now it seems like we</p> <p>12 have to use it for court cases, even though it's just</p> <p>13 as useful to simply look at the district and you can</p> <p>14 make a determination. Because really compactness goes</p> <p>15 beyond -- it really should go beyond just a pure</p> <p>16 calculation to look at other factors.</p> <p>17 Q. So you think visual inspection is just as --</p> <p>18 A. -- Among other things. But if you're doing a</p> <p>19 cross-jurisdictional analysis, that's hard to do, so</p> <p>20 that's where Reock scores probably come in handy.</p> <p>21 But, I mean, I can look at the Illustrative Plan 1</p> <p>22 and 2 and tell whether that would -- both of those</p> <p>23 plans would pass muster with the court in my opinion</p> <p>24 without any doubt.</p> <p>25 Q. Okay. Paragraph 30 of your initial report,</p>	<p style="text-align: right;">Page 76</p> <p>1 six out of seven.</p> <p>2 Q. But doesn't the fact that you can show six</p> <p>3 majority black districts indicate that African</p> <p>4 Americans are not concentrated?</p> <p>5 A. No. No. But this Hypothetical Plan B was</p> <p>6 drawn with race as a sole criterion, just to show that</p> <p>7 if you really stretch things and make irregularly</p> <p>8 shaped districts, you could get six out of seven</p> <p>9 districts in Ferguson-Florissant. So this would</p> <p>10 constitute in my opinion a racial gerrymander.</p> <p>11 Q. So we just established using your numbers that</p> <p>12 forty-eight point -- did you say forty-eight point nine</p> <p>13 five of the voting age population in 2010 was</p> <p>14 non-Hispanic white, fifty-one point oh five was some</p> <p>15 combination of minorities, and yet you can draw six</p> <p>16 districts and say with that population split that the</p> <p>17 African Americans are concentrated?</p> <p>18 A. Well, this particular plan arguably is</p> <p>19 inappropriate to use to make that point because race</p> <p>20 was the sole criterion and I had to really do some</p> <p>21 weird things with Districts 4 or 5 and 1 in particular</p> <p>22 to accomplish that objective.</p> <p>23 But if you slip back and look at Illustrative Plan</p> <p>24 1, Illustrative Plan 2, or for that matter in my</p> <p>25 supplemental report, if you just look at the areas that</p>
<p style="text-align: right;">Page 75</p> <p>1 the thick one there, you state that by 2010 a plurality</p> <p>2 of the VAP, approximately forty-eight point nine</p> <p>3 percent, was non-Hispanic white, right? Is that what</p> <p>4 you state?</p> <p>5 By 2010 a plurality of the voting age population,</p> <p>6 approximately forty-eight point nine percent, was</p> <p>7 non-Hispanics white?</p> <p>8 A. That's right.</p> <p>9 Q. So if forty-eight point nine percent of the</p> <p>10 VAP was non-Hispanic white, doesn't it necessarily mean</p> <p>11 that fifty-one point oh five of the VAP was minority in</p> <p>12 2010?</p> <p>13 A. Yes, but that would include Asian Americans,</p> <p>14 American Indians, some of the other racial categories.</p> <p>15 Q. Okay. In your supplemental report you include</p> <p>16 a Hypothetical Plan B, which creates six of seven</p> <p>17 majority BVAP districts, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Doesn't Gingles 1 require the minority</p> <p>20 group to be geographically concentrated?</p> <p>21 A. Well, they are in Ferguson-Florissant School</p> <p>22 District. That's how you can draw four out of seven</p> <p>23 and five out of seven. And if you really stretch it,</p> <p>24 and this is arguably not going to work because these</p> <p>25 districts look a little funny, but you could even get</p>	<p style="text-align: right;">Page 77</p> <p>1 are included in the areas that have been --</p> <p>2 Q. I just want to --</p> <p>3 A. -- If you look at the Figure 1, you can see</p> <p>4 that African Americans live in a general area in the</p> <p>5 south and a part of the north where -- where arguably</p> <p>6 they live in a concentrated area. Those are the black</p> <p>7 majority districts that I drew in districts -- in</p> <p>8 Illustrative Plan 1.</p> <p>9 Q. Going back to your Hypothetical Plan B, have</p> <p>10 you ever presented a plan with anything like eighty-six</p> <p>11 percent supermajority of African American districts in</p> <p>12 any other VRA case that you've been involved with?</p> <p>13 A. Not in -- certainly not in a county that is</p> <p>14 only -- or a jurisdiction that is only fifty percent</p> <p>15 black. Not to my knowledge. And if I did, they</p> <p>16 certainly wouldn't have looked like that because</p> <p>17 Hypothetical Plan B would, in my opinion, probably not</p> <p>18 pass muster with the court.</p> <p>19 Q. Okay. So let's go to your Plans 1 and 2 in</p> <p>20 your initial report. Did you use AP BVAP or single</p> <p>21 race BVAP in your calculations?</p> <p>22 A. Well, I use both. I report both in my</p> <p>23 exhibits.</p> <p>24 Q. But when you determine your percentage of BVAP</p> <p>25 for the plans, what did you use, AP BVAP or single race</p>

1 BVAP?

2 A. There's hardly any difference. I mean, in the

3 tables I produced, I reported both figures and so I

4 think it's okay to use either one. I believe in my

5 report I may have just used AP BVAP in the summary

6 paragraphs. Let me go back and look at my -- yeah.

7 Q. If I could turn you to page 23 of your initial

8 report, it shows Illustrative Plan 1. And in this plan

9 you have percentage A over eighteen -- eighteen and

10 over black and you give percentages for each of the

11 seven districts. And my question is simply, Is that

12 using -- are those numbers AP BVAP or single race BVAP?

13 A. I will tell you in a moment.

14 Those are single race, good, because the

15 indication there is eighteen plus black. I don't say

16 eighteen AP black. So, yes, those are single race.

17 Q. These are single race?

18 A. Right.

19 Q. Thank you for that clarification.

20 A. Exhibit \*\*E-2 reports both any part and single

21 race --

22 Q. Okay.

23 A. -- VAP. And then Exhibit \*\*F-2 would do the

24 same for Illustrative Plan 2.

25 So I report both. And I could have reported more

1 combinations but at some point that's overkill.

2 Q. Okay.

3 A. As you can see, there's very little

4 difference. You know, about a percentage point

5 difference in the district-by-district tabulation.

6 Q. Okay.

7 A. Just as there's about a percentage point

8 difference in District 1.

9 Q. I just want to clarify -- a clarification on

10 what that number was.

11 A. Okay.

12 Q. So in your Figure 10, back on page 23, you

13 have a District 7. It's fifty-two point eight six

14 percent BVAP, right?

15 A. Single race.

16 Q. BVAP then?

17 A. Uh-huh, right.

18 Q. Single race BVAP.

19 Do you believe that that's an effective

20 single-member district?

21 A. I will have to defer to Dr. Engstrom to speak

22 in terms of what's effective and not effective. But

23 it's a seat that is currently held by an African

24 American who is elected at-large in a school district

25 that is slightly under fifty percent African American

1 VAP. So there is a reason to believe it would be

2 effective in my opinion but Dr. Engstrom's opinion

3 would be the probative one.

4 Q. Okay. And would your answer be the same when

5 we look at your Illustrative Plan 2 where you have

6 created a district with fifty-one point five percent

7 single race BVAP? If I ask if it was -- if you

8 believed it was an effective single-member district?

9 A. I believe it is. I mean, that district is

10 currently represented by someone who is elected

11 at-large, so there is reason to believe that

12 Ms. Thurman could win in that district at fifty-one

13 point five.

14 Q. What's the lowest number possible to create an

15 effective BVAP in your opinion?

16 A. Somewhere right around fifty-one. I mean,

17 it's got to be more than fifty. So, I mean, I think in

18 that part of the school district, which appears to be a

19 higher income area, and the fact that there's a black

20 incumbent living in that district, that it is viable.

21 I suspect a figure that low in Ferguson would not

22 be viable based on the fact that, from what I

23 understand, Ferguson wards that often are above sixty

24 percent or close to sixty percent black VAP

25 multi-member, have not historically elected African

1 Americans consistently.

2 So in the south end of the school district I think

3 you'd probably need to be closer to sixty percent

4 black. But again, I have to defer to Dr. Engstrom.

5 Q. Okay. You were deposed in the Yakima case; is

6 that right?

7 A. I was.

8 Q. Okay. And I have a copy of it if you need to

9 look at it, but do you remember testifying in your

10 deposition there that over fifty percent is over fifty

11 percent?

12 A. I do recall. I don't recall that specific

13 statement but -- because in Yakima we have to rely on

14 citizenship data. We're looking at estimates. And at

15 the time of the deposition it was just above fifty

16 percent in one of the illustrative plans. Just above

17 fifty percent Latino CVAP and so it did meet the

18 threshold according to Bartlett.

19 Q. Okay. Let's go ahead and enter the Yakima

20 depo.

21 (Defendant's Exhibit D was marked for

22 identification.)

23 Q. (By Ms. Ormsby) Okay. Could you turn to

24 page 105 of that deposition?

25 MS. ORMSBY: But I need a copy of it.

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1 MS. GABEL: Yeah, go ahead.  
 2 Q. (By Ms. Ormsby) And there's four to a page so  
 3 it's actually on page 27 of the actual deposition. And  
 4 I believe it's the part that I'm referring you to, you  
 5 have my copy, it's highlighted.  
 6 A. Right.  
 7 Q. I'll give you a minute to look over that  
 8 testimony that's highlighted there and ask you, Did you  
 9 testify that one person over fifty percent is an  
 10 effective district?  
 11 A. I believe it is effective in the City of  
 12 Yakima, that's right. These are two totally different  
 13 cases. But that was my testimony and I think it's  
 14 being borne out now because there will be primaries  
 15 sometime this month. Maybe they've just had them today  
 16 or tomorrow. I mean, it's imminent.  
 17 Q. All right. So do you believe that District Y,  
 18 if it was ever determined that the BVAP was over fifty  
 19 percent even by one person, that that would be an  
 20 effective district?  
 21 A. In Ferguson-Florissant School District?  
 22 Q. Uh-huh.  
 23 A. My gut feeling is that it's not but I would  
 24 defer to Professor Engstrom. But I think for a large  
 25 area that is over seventy thousand people or near

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1 seventy thousand and if it's just barely above fifty  
 2 percent black VAP, a district in an at-large election  
 3 under those circumstances would probably not lead to  
 4 four out of seven African Americans being elected.  
 5 Q. What about three out of seven?  
 6 A. Unlikely. Maybe it's happened. I don't know.  
 7 Again, I have to defer to Professor Engstrom. But I  
 8 think in Ferguson-Florissant it is more likely that  
 9 African Americans will run successful campaigns in  
 10 districts as opposed to at-large, just as it's  
 11 definitely the case in Yakima where Latinos make up  
 12 over forty-five percent of the population but could  
 13 never win in an at-large election.  
 14 Q. What turnout rate is required for your plans  
 15 to achieve the result you assume?  
 16 A. Well, that's -- turnout, I don't know what you  
 17 mean by turnout. But more than -- more than fifty  
 18 percent of the votes cast would have to go to an  
 19 African-American candidate.  
 20 Q. Obviously. But, I mean, do you even include  
 21 in your calculation at all what the voter turnout rate  
 22 would be?  
 23 A. No. That's extremely speculative, in part  
 24 here because we're starting with an at-large system,  
 25 which would tend to depress turnout rates naturally in

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1 the minority population if you were a minority voter  
 2 and realized that you may not be able to successfully  
 3 choose a candidate of choice due to being a minority in  
 4 a majority-wide school district. So that suppresses  
 5 turnout historically.  
 6 So I just don't think you can use at-large  
 7 elections to make that kind of speculative  
 8 determination.  
 9 Q. Okay. Do you agree that in your Hypothetical  
 10 Plans 1 and 2 in your initial report that the four  
 11 majority BVAP districts are constructed around areas of  
 12 the district that have a higher overall  
 13 African-American population?  
 14 A. Yes. They're in the African-American areas of  
 15 the city. Of the school district, excuse me.  
 16 Q. And are you aware that plaintiffs in VRA cases  
 17 typically try to assess things like turnout  
 18 differentials between racial groups in specific  
 19 neighborhoods in order to assess whether specific  
 20 districts are effective for African Americans?  
 21 A. I'm aware that that kind of analysis can be  
 22 done. But again, I will defer to Dr. Engstrom to make  
 23 a comment on that because I do not do statistical  
 24 analysis. I do the easy stuff.  
 25 Q. So you haven't looked at turnout rates at all

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1 then?  
 2 A. I mean, I have not seen Dr. Engstrom's report.  
 3 I'm sure if there was something about District 7 that  
 4 made it highly problematic, I would have been alerted  
 5 to that fact and it wouldn't have been filed as  
 6 Plaintiffs' Illustrative Plan 1 or Plaintiffs'  
 7 Illustrative Plan 2 with a fifty point one, fifty point  
 8 two percent. Fifty-one or fifty-two percent any part  
 9 black VAP.  
 10 I did see in Dr. Rodden's analysis that he did  
 11 some sort of an estimate of turnout and determined that  
 12 there were only two districts that would potentially  
 13 elect African Americans. But again, that's based on  
 14 at-large voting historical patterns that are probably  
 15 not that relevant to the question at hand.  
 16 Q. So did Professor Engstrom contact you at all  
 17 and talk to you about your hypothetical plans?  
 18 A. No, I've had no -- I've had no contact with  
 19 Professor Engstrom about my plans. I'm sure that if  
 20 there were an issue, he would have relayed that to the  
 21 attorneys and they would have told me, yeah, that that  
 22 particular configuration would not work.  
 23 Q. Okay. And you haven't heard anything -- any  
 24 comments from the attorneys regarding Professor  
 25 Engstrom's?

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 A. No. No. I mean, it's reasonable to assume 2 that Ms. Thurman would win in the district that is 3 configured around fifty-one or fifty-two percent black 4 VAP because she has been successful at-large with 5 numbers that are under fifty. 6 Q. How many cases have you been involved in where 7 there has consistently been minority representation on 8 an elected governing board? 9 A. Oh, many. Often it's underrepresented but 10 many, many cases I've been involved in where there's 11 been minority representation. 12 For example, Albany County, New York, recently off 13 the griddle, a lawsuit was filed in 1990 that created a 14 new third minority-majority district African American. 15 Another lawsuit had to be filed in 2003 that I was 16 involved in. That created a fourth. And now a fifth 17 minority-majority district has been ordered by the 18 court. 19 And again, there will be elections. I guess their 20 primary election's this month and the general election 21 in November. And that case is resolved. It's not 22 being appealed. 23 Not resolved yet on the legal phase. County 24 received a tab for six point nine million dollars from 25 Gibson Dunns' work on behalf of the plaintiffs in that</p>	<p style="text-align: right;">Page 88</p> <p>1 minority population, which is predominantly American 2 Indian, is just about fifty percent Indian VAP 3 countywide. There are others out there. I just can't 4 name them off the top of my head 5 Sussex County, Virginia. I worked for the County 6 in that instance in both 2000 and 2010, to just remind 7 myself, and helped them draft their plans. And at one 8 point in sometime around 2003 or so a lawsuit was 9 filed, which is when I became involved with the County. 10 And there was concern about the shape of the districts 11 or something and I drew another plan and the case 12 settled. And Sussex County, Virginia, I think, is just 13 over fifty percent black VAP. 14 But that was not really a Section 2 case, the one 15 in 2000, so there was no pending because the case 16 settled. But that's another instance of a county 17 that's right around fifty percent. It's a little 18 higher now. I think it's closer to fifty-five. 19 Q. In paragraph 9 of your rebuttal report, this 20 report here, you rely on the five-year ACS, the '09-'13 21 to -- is that right? 22 A. Well, I report it. And it's the only 23 information available. That's right. 24 Q. And this data, it includes data that's older 25 than the data that's in the 2010 Census since it goes</p>
<p style="text-align: right;">Page 87</p> <p>1 case. I don't know how long it's going to take to 2 resolve that. 3 Q. Are you aware that Ferguson-Florissant's board 4 has had one or two elected minorities on the board of 5 education going back to the 1980s? 6 A. I did not know it was consistent but now I 7 know. 8 Q. How many cases have you been involved in where 9 the minority VAP is -- let me back up. 10 Using the 2010 Census and your numbers, you've 11 determined that the any part black VAP is forty-eight 12 point nine percent, correct? 13 Do you need to go back and look at your report? 14 A. According to 2010 Census? 15 Q. Uh-huh. 16 A. Yes, I think that's right. I think it's 17 forty-eight point nine four but close enough. 18 Q. Okay. How many cases have you been involved 19 in where the minority VAP is so near the white VAP? 20 A. You know, I can't -- I mean, I have no way to 21 tell you that. I mean, I know it's happened. It's 22 happening right now in a case in Hattiesburg, of 23 course, which has not been resolved. That will be 24 appealed. 25 It's happening in San Juan County, Utah, where the</p>	<p style="text-align: right;">Page 89</p> <p>1 back to 2009? 2 A. The survey midpoint would be 2011 so even 3 though some of these survey respondents obviously 4 filled out their forms in 2009, on average it's a 5 little more current with the survey midpoint of July 6 2011. So it's very, you know, it's one year after the 7 2010 Census. 8 Q. And you used that data to assess citizenship? 9 A. Right. 10 Q. Is it your understanding there's a substantial 11 number of black noncitizens living in the 12 Ferguson-Florissant School District? 13 A. No, there are not very many. 14 Q. Have you been asked in other cases to analyze 15 black CVAP? 16 A. I have analyzed black CVAP in other instances. 17 This is becoming a more common thing. Back in the old 18 days it was never an issue. But I believe when I was 19 working on the -- it's not a case. When I was working 20 on the Miami-Dade County Commission Redistricting 21 Project, which involved other demographers also in 22 Florida, I think I calculated black CVAP by district. 23 And I've look at it in some other cases, including 24 Albany County and in other places. 25 Q. But CVAP is usually more prevalent in Hispanic</p>



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1 populations; can we agree on that?

2 A. Well, no. CVAP is prevalent everywhere. And  
3 in this case it's every bit as reliable as the total  
4 population voting age estimates. So here you see that  
5 in terms of black citizenship rates, the overall black  
6 citizenship rate in the school district is forty-eight  
7 point one two percent while the overall non-Hispanic  
8 white citizenship rate is forty-nine point one four.

9 So in that instance whites are still a plurality  
10 of the citizen voting age population, which I would  
11 argue is more relevant for voting purposes than just  
12 the straight-up voting age population calculation from  
13 the estimates.

14 Q. Can you tell me why you used the five-year  
15 report for this number and not the three-year report as  
16 you used in your other numbers?

17 A. Because it's not available in the three-year  
18 report due to data suppression. That's why it's not in  
19 my Exhibit D. That's the point I was raising. That as  
20 you start getting below sixty-five thousand or, you  
21 know, even as high as sixty-five thousand or seventy  
22 thousand, there's still going to be some data  
23 suppression just due to survey issues, which is why one  
24 has to fall back on the five-year survey.

25 So really, I mean, I can't stress enough that

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1 projections that I'm aware of.

2 Q. But they're significant to point -- they were  
3 significant enough to point out in your initial report,  
4 the rapid changes, correct?

5 A. Right. Because it was documented. There's a  
6 historical trend from 1990 to 2010. What we don't know  
7 is the trend from 2010 to 2015. You can speculate, you  
8 can draw linear trend lines, but it's still  
9 speculation.

10 Q. Are you -- have you been hired as an expert  
11 demographer in this case?

12 A. Expert redistricting consultant.

13 Q. So your expertise is analyzing and -- is an  
14 area of expertise analyzing and determining population  
15 trends?

16 A. Not -- no. I mean, I was hired to assist the  
17 Plaintiffs with redistricting plans, redistricting  
18 analysis, and demographics. But I was not asked ever  
19 to do any kind of trend analysis.

20 Q. So you're not saying that a respectful  
21 demographer would never make projections based on a  
22 strong trend from prior years and that a court should  
23 never consider such a trend then?

24 A. It's fine to make projections and perhaps the  
25 court should consider it. I don't know. But I'm still

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1 paragraph 9 is all that matters in this particular  
2 case. If you are forced to use the ACS data as a  
3 metric, then you've got to use the citizen voting age  
4 population, not total age voting population because  
5 only citizens can vote.

6 Q. Would you turn to page 11 of your initial  
7 report. I'm looking at Figure 5.

8 A. Oh, page 11 of my initial report?

9 Q. Uh-huh.

10 A. Yes.

11 Q. Okay. In this figure and in the paragraph  
12 above you note the rapid changes that have occurred in  
13 the district. Is this based -- is that right?

14 A. Well, that's right. That just compares the  
15 voting age population for African Americans, including  
16 Hispanics and non-Hispanic whites, over the three  
17 decennial censuses, 1990, 2000, 2010.

18 Q. So I guess I'm a little confused because in  
19 your rebuttal report you very clearly state, quote,  
20 projections based on trend lines from prior years are  
21 highly speculative.

22 But you spend quite a few paragraphs in your  
23 initial report pointing out the rapid changes within  
24 the school districts.

25 A. Right. Historical trends. I'm not making any

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1 saying that it is simply a projection and a guess in  
2 the final analysis. And it becomes especially  
3 problematic in this instant case because of the events  
4 of last year.

5 MS. ORMSBY: Okay. I think this is a great  
6 place for a break for lunch. It's twenty-five till  
7 12:00. I don't have all that much more so to be a  
8 shorter afternoon than it was morning.

9 (Lunch break.)

10 Q. (By Ms. Ormsby) Okay. Your rebuttal report  
11 takes issues with Dr. Rodden's statement that the  
12 majority of African-American households are occupied by  
13 owners rather than renters. If you want to look at  
14 paragraph 17 of your rebuttal report, I believe that's  
15 where you take issue.

16 A. Yeah.

17 Q. It's on page 10.

18 A. Oh, on page 10. I'm sorry. I'll say yes.

19 All right.

20 Q. What is the percentage of home ownership that  
21 you cite in paragraph 17 according to the 2011-13 ACS?  
22 A. It is fifty point seven percent.

23 Q. Okay. So you don't deny that African-American  
24 home ownership is in excess of fifty percent?

25 A. That's true. I mean, I'm not saying -- that

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 technically is correct, it's just about fifty. It's</p> <p>2 just if you read his report, it implies that things are</p> <p>3 going swimmingly well in the home ownership arena and</p> <p>4 that would not be the case if you look back ten years</p> <p>5 or if you compare the gap between whites and blacks in</p> <p>6 the Ferguson-Florissant area.</p> <p>7 Q. If you look at paragraph 18 of your rebuttal</p> <p>8 report, what home ownership rate for African American</p> <p>9 is the entire State of Missouri according to the</p> <p>10 '11-'13 ACS?</p> <p>11 A. Forty point five percent.</p> <p>12 Q. So your own statistics indicate that the rate</p> <p>13 of African-American homeowners in the district is</p> <p>14 approximately ten percent higher than the rest of the</p> <p>15 state?</p> <p>16 A. Ten percentage point's higher. It's not my</p> <p>17 statistics, it's just the Census Bureau's.</p> <p>18 Q. Okay. And then Figure 3 of your report, which</p> <p>19 is on page?</p> <p>20 A. Eleven.</p> <p>21 Q. Thank you. Yeah.</p> <p>22 Shows that between 2005 and 2013 the number of</p> <p>23 homeowners dropped in the district and then it began to</p> <p>24 rise again; is that right?</p> <p>25 A. It has risen, it appears, since the 2009-11</p>	<p style="text-align: right;">Page 96</p> <p>1 percentage of African-American home ownership in the</p> <p>2 Ferguson-Florissant School District area is higher than</p> <p>3 it is statewide. So, I mean, that's a fact.</p> <p>4 Q. Okay.</p> <p>5 A. Not disputing that.</p> <p>6 Q. Have you -- have you had the opportunity to</p> <p>7 read Dr. Rodden's supplemental report that focuses on</p> <p>8 VRA Senate Factors?</p> <p>9 A. I read a supplemental report which was a</p> <p>10 rebuttal to my report. Is that what you're referring</p> <p>11 to or is it another report?</p> <p>12 Q. Yeah. Let's go ahead and enter it so we're</p> <p>13 talking about the same document.</p> <p>14 (Defendant's Exhibit E was marked for</p> <p>15 identification.)</p> <p>16 Q. (By Ms. Ormsby) Could you look at Figure 3 on</p> <p>17 page 17?</p> <p>18 There is no seventeen.</p> <p>19 A. Figure 3 on?</p> <p>20 Q. Page --</p> <p>21 MR. McDONALD: Doesn't have seventeen pages.</p> <p>22 MS. ORMSBY: Yeah, I know. That's what I'm --</p> <p>23 my typing is not all that great. Trust me.</p> <p>24 A. Well, I have seen this report or this</p> <p>25 supplemental declaration.</p>
<p style="text-align: right;">Page 95</p> <p>1 ACS by a couple of percentage points, right.</p> <p>2 Q. Could that have anything to do with the Great</p> <p>3 Recession?</p> <p>4 A. Would have a lot to do with the Great</p> <p>5 Recession I would assume. And recovery. Things seem</p> <p>6 to be recovering a little bit now. As of 2012. But</p> <p>7 again because of last year's events, it's a crap shot</p> <p>8 as to which way this goes in the future ACS iterations.</p> <p>9 Q. But you don't know how it's going to go,</p> <p>10 right?</p> <p>11 A. No, I don't. Nobody does.</p> <p>12 Q. Why didn't you provide similar data such as</p> <p>13 this for the State of Missouri?</p> <p>14 A. I just thought this was adequate to make the</p> <p>15 point. Like, I could. It's certainly available.</p> <p>16 Q. And is this data available nationwide as well?</p> <p>17 A. It is available nationwide as well. Year by</p> <p>18 year for sure.</p> <p>19 Q. But as of right now your most recent year's</p> <p>20 data, it's better -- how would you compare district</p> <p>21 home ownership statistics with state statistics? Do</p> <p>22 you think it's better to live inside the district or</p> <p>23 outside the district?</p> <p>24 A. Well, it just all depends on where you're</p> <p>25 living outside. I mean, it's -- obviously the</p>	<p style="text-align: right;">Page 97</p> <p>1 MS. GABEL: Maybe I gave you the wrong one.</p> <p>2 MS. ORMSBY: I don't think this is the right</p> <p>3 report. This is not it.</p> <p>4 (Defendant's Exhibit E was remarked for</p> <p>5 identification.)</p> <p>6 Q. (By Ms. Ormsby) Now page 17. I promise</p> <p>7 that's correct.</p> <p>8 A. Okay. I don't think I have seen this report.</p> <p>9 Q. You have not seen this report?</p> <p>10 A. I have not seen it, no.</p> <p>11 Q. Okay. If you would still turn to page 17,</p> <p>12 Figure 3, this is just a presentation -- Dr. Rodden's</p> <p>13 presentation of ACS data. So you've looked at the ACS</p> <p>14 data. Can you -- do you have any reason to believe</p> <p>15 that his data's wrong?</p> <p>16 A. Well, I have no way of knowing 'cause I have</p> <p>17 not looked at metro St. Louis or the State of Missouri.</p> <p>18 I have data available. I can make that data available</p> <p>19 to myself. I have it but I've never used it for this</p> <p>20 particular case. I was simply focusing on the</p> <p>21 disparities within the school district itself.</p> <p>22 Q. Okay. So this table compares</p> <p>23 Ferguson-Florissant School District with the St. Louis</p> <p>24 metropolitan area and then the State of Missouri. And</p> <p>25 at least as far as I understand that you haven't looked</p>

25 (Pages 94 to 97)



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1 at this data and compared it to this chart, but  
2 according to this chart anyway, in the area of  
3 bachelor's degree's gap, college degree gap, poverty  
4 gap, SNAP gap, and unemployment gap,  
5 Ferguson-Florissant School District is better off than  
6 both the St. Louis metropolitan area and Missouri.  
7 Would you agree that that's what this table says  
8 anyway?

9 I'm not asking you to commit yourself to the  
10 actual data.

11 A. That would appear to be the case. But again,  
12 I haven't looked at the data so I can't confirm that  
13 that's the case.

14 Q. But you just said you do have access to that  
15 data?

16 A. Well, yeah, I do.

17 Q. Okay.

18 A. But I've not -- I was not asked to do that  
19 sort of an analysis, and I assume that Professors  
20 Gordon and Kimball are on that, so.

21 Q. Okay.

22 A. Whatever I might say would not be of value  
23 probably.

24 Q. But you were asked to include different social  
25 indicators in your initial report; is that right?

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1 A. Fayette County, Georgia.

2 Q. I'm sorry, where?

3 A. Fayette County, Georgia. There may be slight  
4 disparities favoring whites in that county but it is  
5 remarkably homogeneous whites and African Americans.  
6 African Americans are very well off or reasonably well  
7 off in Fayette County, Georgia, unlike the rest of the  
8 state.

9 Q. Okay. And with regard to all of the social  
10 areas that are listed in Dr. Rodden's report?

11 A. Yeah, I think maybe the poverty rate is a  
12 little bit higher. There's probably no difference --  
13 I'm talking about Fayette County, Georgia?

14 Q. Yeah, that's what I'm asking about.

15 A. Yeah, I think the poverty rate is a little bit  
16 higher in African Americans. The whites are very off.  
17 Fayette County is a suburban county that has grown  
18 significantly since 1990 and it's a bedroom community  
19 for Atlanta. And there are a lot of high income  
20 families now living in Fayette County, Georgia. Both  
21 white and black.

22 Q. Other than Fayette County, Georgia, are you  
23 aware of any other areas?

24 A. Actually, I think if you looked at a lot of  
25 Appalachian counties you would find parity between

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1 A. That's right. Just comparing African  
2 Americans and non-Hispanic whites in the school  
3 district.

4 Q. But you didn't -- you didn't give any sort of  
5 benchmark as to how those numbers related to outside of  
6 Ferguson-Florissant School District?

7 A. No. I was just showing the disparities exist  
8 there, which is really the primary issue in this case I  
9 would think.

10 Q. So do you not believe that this sort of  
11 information is relevant?

12 A. Well, it's interesting. I just don't think  
13 it's as relevant as the disparities within the school  
14 district itself. But that's my own opinion. And  
15 again, I have not read Professors Gordon and Kimball's  
16 report either. Not because I am remiss, it's just that  
17 I think the attorneys in most of these cases prefer  
18 that experts not review reports written by experts from  
19 the same side, just to keep up kind of a Chinese wall  
20 between experts. That's what I think happens.

21 Q. Are you aware of any municipality or school  
22 district anywhere that doesn't have disparities between  
23 African Americans and whites?

24 A. Yes.

25 Q. Where?

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1 whites and blacks. Both are very bad off. But those  
2 are never in Section 2 cases.

3 So there would be other places I'm sure. But in  
4 most Section 2 cases I'm involved in, whites are better  
5 off than blacks -- now you -- but what I'm looking at  
6 mainly is the gap in the disparity. Because in some  
7 places you would find white poverty rate and white  
8 education levels to be as low or lower than African  
9 Americans in Ferguson-Florissant, but you would also  
10 find a corresponding lower rate among whites. So  
11 there's still the disparity, it's just a different gap.

12 Q. How do you determine whether or not the gap  
13 between African Americans and whites is exceptional  
14 unless you compare it to other areas?

15 A. Well, you could. I mean, you could do that.  
16 I wasn't asked to do that in this case, but I think it  
17 is very significant. I mean, I have not read this  
18 report so there's no way I can really comment on what  
19 Professor Rodden did with this report. But he appears  
20 to be addressing Professor Kimball and Professor Gordon  
21 if I'm not mistaken. So I'll leave it up to them to  
22 respond to this.

23 Q. So you would agree the stats that you provide  
24 in your two reports aren't in any context as it relates  
25 to outside the Ferguson-Florissant School District?

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 A. That's correct.</p> <p>2 Q. Okay.</p> <p>3 A. Except to the extent that I did report white</p> <p>4 home ownership rates because Dr. Rodden focused on that</p> <p>5 in his initial report. And while it's true that</p> <p>6 African-American home ownership is higher in</p> <p>7 Ferguson-Florissant School District than it is</p> <p>8 statewide, it's not surprising because it's suburban.</p> <p>9 By the same token, white home ownership rates are</p> <p>10 significantly higher in Ferguson-Florissant School</p> <p>11 District than they are statewide. So there's still a</p> <p>12 gap. And the gap is almost as large statewide as it is</p> <p>13 in Ferguson-Florissant but it starts from a different</p> <p>14 floor.</p> <p>15 Q. Did you make any comparisons to surrounding</p> <p>16 school districts?</p> <p>17 A. No.</p> <p>18 Q. Of similar racial makeup?</p> <p>19 A. No. I wasn't asked to.</p> <p>20 Q. When thinking about racial integration of</p> <p>21 census block groups, would you say that an African</p> <p>22 American is understood to be living in segregated</p> <p>23 living conditions if the black population of the tract</p> <p>24 or block group is more than sixty percent?</p> <p>25 A. Well, that's a fair assumption but it could be</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And these predominantly black census groups</p> <p>2 have a total of 2010 black -- total in 2010, black</p> <p>3 population of nineteen thousand one hundred and</p> <p>4 twenty-six; is that right?</p> <p>5 A. Right.</p> <p>6 Q. And that represents fifty-three percent of the</p> <p>7 total black population in the districts?</p> <p>8 A. Correct.</p> <p>9 Q. So do I understand you correctly that this</p> <p>10 minimal definition of segregation, a little more than</p> <p>11 one-half of the black population in Ferguson-Florissant</p> <p>12 lives in block groups that are segregated by this very</p> <p>13 minimal definition?</p> <p>14 A. That's -- that's true. I mean, unless I made</p> <p>15 a calculation error, that is the reality. That over</p> <p>16 half of the African-American population in</p> <p>17 Ferguson-Florissant School District resides in census</p> <p>18 blocks that are -- census block groups that are sixty</p> <p>19 percent or more African American.</p> <p>20 Q. So around half of the African Americans living</p> <p>21 in the district live in racially integrated census</p> <p>22 block groups?</p> <p>23 A. Well, there is that range of fifty to sixty so</p> <p>24 at that -- in those blocks, I don't have a figure for</p> <p>25 that, but one could argue that, well, I should use</p>
<p style="text-align: right;">Page 103</p> <p>1 defined other ways.</p> <p>2 Q. Would you say that a block group of</p> <p>3 fifty/fifty, you wouldn't say that is segregated, would</p> <p>4 you?</p> <p>5 A. Well, it's certainly less than sixty.</p> <p>6 Fifty/fifty. I mean, it would really vary from</p> <p>7 jurisdiction to jurisdiction. But I wouldn't say that</p> <p>8 it's segregated but it could be an indication of an</p> <p>9 area where a majority black district could be drawn.</p> <p>10 For example, the segregation rate in Fayette</p> <p>11 County, Georgia, would not be as high as it is in the</p> <p>12 Ferguson-Florissant School District based on that</p> <p>13 metric. There are many more fifty/fifty blocks than</p> <p>14 blocks that are sixty percent or higher probably in</p> <p>15 Fayette County, Georgia.</p> <p>16 Q. Let's look at paragraph 15 of your</p> <p>17 supplemental report.</p> <p>18 You state that there are twenty-six of seventy-one</p> <p>19 block groups in the district with African-American</p> <p>20 population percentages equal to or greater than sixty</p> <p>21 percent; is that right?</p> <p>22 A. Right. Uh-huh.</p> <p>23 Q. And that's reflected on Figure 2, your map on</p> <p>24 Figure 2?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 105</p> <p>1 fifty-five/forty-five instead of sixty-forty. I mean</p> <p>2 sixty/forty -- sixty percent is a good figure to use</p> <p>3 because in a landslide election, for example, anything</p> <p>4 over sixty percent is going to be a landslide. So</p> <p>5 that's a good cutoff point.</p> <p>6 But if I use fifty-five, I don't have that figure</p> <p>7 in front of me, but it would obviously be a higher</p> <p>8 percentage than fifty-three percent. It would be</p> <p>9 fifty-five black, forty-five white.</p> <p>10 Q. Do you know how this compares with other</p> <p>11 municipalities and school districts in the metropolitan</p> <p>12 St. Louis area?</p> <p>13 A. I have not done that analysis. Obviously the</p> <p>14 City of St. Louis is more segregated than St. Louis</p> <p>15 County. I know that just because I at one point in</p> <p>16 early 2002 actually did some work for the ACLU on a</p> <p>17 plan of the City Council in the City of St. Louis and</p> <p>18 it was clear that there was sharp segregation there.</p> <p>19 I do know that metro St. Louis, at least according</p> <p>20 to one study I examined, ranks seventh in the nation in</p> <p>21 terms of segregation. But that's looking at everything</p> <p>22 in the City of St. Louis as well as St. Louis County</p> <p>23 and presumably other counties in the core-based</p> <p>24 statistical area that encompasses St. Louis.</p> <p>25 Q. Are you able to name another school district</p>

<p style="text-align: right;">Page 106</p> <p>1 in the metropolitan St. Louis area where the population 2 is more racially integrated than Ferguson-Florissant? 3 A. I can't -- I can't tell you. I've not looked 4 at other examples. 5 Q. You just stated you hadn't read any of the 6 other experts' reports, so you haven't read 7 Dr. Kimball's supplement report, have you? 8 A. I have not. I have not read anything produced 9 by Dr. Kimball or Dr. Gordon or any response to 10 anything they've written. 11 Q. I'm going to -- 12 A. Not because I was lazy or. 13 Q. I'm not accusing you of that. 14 A. I just wasn't provided with that information. 15 Q. I understand. We're going to go ahead and 16 mark Dr. Kimball's supplemental report and it will be F 17 as in Frank. And I'm just doing this so -- I want to 18 quote from it and I want you to make sure that you know 19 I'm not making it up. 20 (Defendant's Exhibit F was marked for 21 identification.) 22 Q. (By Ms. Ormsby) All right. So if you could 23 turn to page 4 of this report. We'll look at the 24 middle paragraph, the second sentence. And you can 25 check me. It says, "There are many precincts in the</p>	<p style="text-align: right;">Page 108</p> <p>1 District 'cause you're working with larger -- larger 2 entities of voting blocs. 3 Q. So would you agree with his statement that 4 there are many precincts with similar proportions of 5 black and white adults? 6 A. I have not -- I mean, I actually produced 7 those numbers but have not studied that, I mean, as 8 part of my work with Dr. Engstrom so I can't say. But 9 it would not surprise me in part because of the 10 consolidated precinct issue. 11 Q. Okay. 12 A. So that there would not be very many 13 homogeneous precincts after consolidation. 14 Q. Okay. 15 A. But you would see more areas that might 16 qualify for homogeneous precincts if you used the 17 original precinct itself. Because there are ninety-six 18 precincts. Some of them are unpopulated. I think 19 probably about eighty of them are populated, which is 20 not that far off from the number of block groups in the 21 County. 22 So a rough -- you could get a rough estimate of 23 perhaps of what would constitute a consolidated 24 precinct -- what would constitute a homogeneous 25 precinct by looking at the block group data. But you</p>
<p style="text-align: right;">Page 107</p> <p>1 school district with similar proportions of black and 2 white adults." Is that what it says? 3 A. That's what it says. 4 Q. Okay. And then he goes on in that paragraph, 5 if you want to peruse it, that he states that it's 6 difficult or a challenge to use either ecological 7 inference or homogeneous precinct analysis because of 8 this similar proportions of black and white adults. 9 And then he goes on in his report to conduct 10 homogeneous precinct analysis where he uses two 11 homogeneously white precincts and four homogeneously 12 black districts. 13 So I understand, did you use -- did you use 14 homogeneous precinct analysis when doing your report? 15 A. No, I never did for Gingles 1. And I would 16 point out that while he's correct -- I mean, he's using 17 consolidated precincts, I think, to do this analysis. 18 There are about ninety-six precincts in 19 Ferguson-Florissant School District. But when there's 20 an election contest, some of the precincts are 21 consolidated for purposes of polling places. 22 So there are -- so each precinct actually is 23 covering a larger geographic area, which reduces the 24 likelihood that you'll be able to find homogeneous 25 precincts in a place like Ferguson-Florissant School</p>	<p style="text-align: right;">Page 109</p> <p>1 couldn't do any voting analysis from the block group 2 data so. 3 Q. Right. Okay. And thinking back into all of 4 the VRA cases that you've been involved with, which 5 cases dealt with a district or -- school district or a 6 municipality where the population was more racially 7 integrated than the Ferguson-Florissant School 8 District? 9 A. Oh, well, there are many. Fayette County, 10 Georgia, immediately comes to mind. Albany County, New 11 York, is probably -- well, I mean, there's a 12 significant Hispanic population there but there's a 13 fair amount of integration at Albany County, New York. 14 Maybe not more than Ferguson-Florissant though. 15 I mean, I just -- I don't typically do a racial 16 segregation analysis. I look to see where the minority 17 population is and then determine whether or not you can 18 draw one or more districts using traditional 19 redistricting principles. 20 And so going a step further and trying to do a 21 racial segregation analysis is kind of far afield from 22 just making the point with Gingles 1. 23 Q. Okay. Okay. Before lunch you stated 24 reluctantly that you did -- that if you had -- were 25 forced to determine the BVAP under the ACS, it would be</p>

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1 forty-nine point eight percent; is that correct?

2 A. Thereabouts. Just a rough estimate, that's  
3 right.

4 Q. Can you tell me how you calculated that?

5 A. Yeah. I mean, I did it two or three weeks ago  
6 or more. But I simply took -- I took twenty -- I  
7 started with the ACS data set. Is that in my  
8 supplemental report?

9 We know there are forty-nine thousand sixty-seven  
10 persons of -- forty-nine thousand six hundred and  
11 seventy-nine persons of voting age of whom twenty-four  
12 thousand three hundred and eight -- three hundred and  
13 thirteen are single race black. And so that's the  
14 floor that I started with.

15 And in effect I looked at the -- any -- the  
16 multi-race category and applied a factor of point five  
17 five to that category to determine that roughly one  
18 more percentage point would be added. Then the point  
19 five five factor -- I think it's point five five. It  
20 could be a little bit more, a little bit less. Comes  
21 from the percentage of the African-American voting age  
22 population under 2010 Census, which is multi-race  
23 black. Which I think is the only one you can possibly  
24 use. There may be other approaches to take but that's  
25 really the only one that would not be totally flawed.

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1 have to take into consideration the disenfranchised  
2 blacks. Have you heard of that argument before?

3 A. Well, if you -- if you have a reliable figure  
4 on the number of felons, for example, living in the  
5 school district, then, yes, that would -- I mean,  
6 potentially, yes.

7 Q. And how he determined that, he's took the  
8 national figures, the national numbers, because that's  
9 all he had and he took the percentage and applied that  
10 percentage to the Ferguson-Florissant BVAP?

11 A. Okay.

12 Q. Do you agree with that method?

13 A. It's somewhat speculative. But obviously  
14 there is going to be some -- there is going to be some  
15 disenfranchised African Americans of voting age because  
16 they're felons. I don't have any idea what that number  
17 is. He used the national percentage. That may be the  
18 best percentage you can come up with. You can't get  
19 that kind of information at the precinct or block group  
20 or census block level. So you have to use some sort of  
21 an outside measure to arrive at that.

22 Maybe there's something available from the State  
23 of Missouri or St. Louis County. I don't know. But  
24 that would lower the overall black VAP. Of course,  
25 you'd also have to look at the percentage of the white

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1 Q. Okay. So you -- I'm slow. Forty-nine  
2 thousand six hundred and seventy-nine total VAP?

3 A. Right.

4 Q. And then you used the single race black?

5 A. Including Hispanics, which is twenty-four  
6 thousand three hundred and thirteen.

7 Then I looked at the multi-race categories and  
8 whatever that number is, I don't have in front of me.  
9 It doesn't really matter. I applied a factor of point  
10 five five or thereabouts. I don't have it in my head  
11 because I did it a month ago. Based on the 2010 Census  
12 and it adds another -- almost another percentage point  
13 onto the single race black VAP according to the  
14 2011-2013 ACS estimates.

15 Of course there's not a Census Bureau estimate.  
16 That is just simply my back of the envelope estimate.  
17 It adds about another percentage point, which is  
18 consistent with what we see in the 2010 Census where  
19 the difference between black voting age and any part  
20 black voting age is roughly one percentage point. So  
21 it's not a surprise that we get another percentage  
22 point.

23 Q. Okay. So one of Dr. Gordon -- in his report,  
24 he actually takes the 2010 Census numbers and he argues  
25 that those are actually too high for BVAP because you

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1 population that is felon as well.

2 Q. Okay. So you testified this morning that you  
3 prefer to rely on the U.S. Decennial Census for  
4 figures?

5 A. For right now. Because the 2011-2013 ACS is  
6 only two years out from the census. The 2011-2012 ACS  
7 is a survey of one out of every forty people on an  
8 annual basis. It includes at least one year prior --  
9 well, I'm sorry. It does not include one year prior.  
10 One year after.

11 So the midpoint is July 2012. But it's an  
12 estimate. And so I think it's fair to continue using  
13 the 2010 Census. Some courts would require you to use  
14 the 2010 Census all the way through 2020 for purposes  
15 of drawing districts.

16 In terms of drawing districts you basically have  
17 to use the 2010 Census all the way till 2021. But as  
18 far as I know, most courts would continue to use the  
19 2010 Census to report the percentage of the  
20 African-American population that is of voting age  
21 rather than the ACS.

22 But I may not be aware -- I haven't read every  
23 court case out there so there may be some courts that  
24 are relying on the ACS for all I know. That's  
25 possible.

29 (Pages 110 to 113)



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1 But again, I keep coming back to the critical  
2 point here in Figure 9, that if you use the ACS, then  
3 you must use citizen voting age population. And if you  
4 use citizen voting age population, then African  
5 Americans represent only forty-eight point one two  
6 percent of the eligible population in the district and  
7 whites, non-Hispanic whites, are forty-nine point one  
8 four. That's before you get into issues of felons who  
9 do not show up in any census report. So you would have  
10 to make a different estimate, as Dr. Kimball has done.

11 Q. Do you believe that the census counts every  
12 person?

13 A. No.

14 Q. So you understand that they don't? There's a  
15 sampling done?

16 A. Well, it's -- not everybody gets counted.  
17 That's right. There's typically an undercount of the  
18 minority population but it really does vary from  
19 community to community.

20 Q. And can you tell me the difference between a  
21 sampling bias and a nonsampling bias?

22 A. Well, a sampling bias would be a problem with  
23 the way the survey methodology was constructed. A  
24 nonsampling -- or I assume. I'm not a statistician. I  
25 probably shouldn't even answer it. It would be a case

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1 undercount/overcount corrected file for the 2010  
2 Census.

3 (Defendant's Exhibit G was marked for  
4 identification.)

5 Q. (By Ms. Ormsby) Can you tell me what this is?

6 A. The Census Bureau releases estimates of  
7 undercount and overcount in the 2010 Census.

8 Q. And if you could go halfway down the page  
9 where it says variation by characteristics, do you see  
10 that?

11 A. Yes.

12 Q. And if you go then to the third paragraph  
13 under that, it starts, "As with prior censuses,  
14 coverage varied by race and Hispanic origin." Could  
15 you read that next sentence?

16 A. What's the -- I'm sorry. Where are you  
17 talking about?

18 Q. Three paragraphs down under the heading  
19 Variation By Characteristics.

20 A. I see that.

21 Q. And the first sentence is, "As with prior  
22 censuses, coverage varied by race and Hispanic origin."  
23 Do you see that?

24 A. Uh-huh. Yes, I do.

25 Q. What does the next sentence say?

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1 where, for example, that there is not a hundred percent  
2 complete count actually because some people are missed,  
3 some people are double counted.

4 Q. All right. And are you aware of any efforts  
5 from the Census Department to assess the size of a  
6 decennial census's nonsampling bias?

7 A. I'm aware but I couldn't tell you what studies  
8 there are or exactly what the percentage bias might be.

9 Q. And are you aware that the census does a very  
10 careful follow-up to the census and they carefully  
11 measure the level of nonsampling bias?

12 A. I know they do lots of follow-up studies.

13 Q. And are you aware that they actually quantify  
14 overcounting and undercounting of various groups?

15 A. They do that at the national and the state  
16 level. I don't think they do it at the school district  
17 level in contrast to the year 2000 when there was  
18 actually a secondary alternative file produced that  
19 took into account the overcount and the undercount.  
20 P.L. 94-171 file. So that you could have actually used  
21 that file to redistrict at the block level.

22 But there were problems with that file ultimately  
23 so the Census Bureau disavowed it around 2003 or so.  
24 So it was never really used in any of the cases I was  
25 ever involved in. And they did not produce a similar

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1 A. You're saying the 2010 Census is undercounted?

2 Q. Overcounted.

3 A. Oh, overcounted. Okay. Nationwide, the 2010  
4 Census overcounted the non-Hispanic white alone  
5 population by zero point eight percent, not  
6 statistically different from an overcount of one point  
7 one percent. Of course that's nationwide.

8 Q. One point one percent in 2000?

9 A. Right. But I have to stress this is a  
10 nationwide study, so it has no relevance for  
11 Ferguson-Florissant. It means nothing.

12 Q. Well, in your opinion, correct?

13 A. In my opinion, yes.

14 Q. And then could you read the first sentence of  
15 that next paragraph?

16 A. "The 2010 Census undercounted two point one  
17 percent of the black population, which was not  
18 statistically significant -- "which was not  
19 statistically different from a one point eight percent  
20 undercount in 2000."

21 Q. Okay. So are you aware that the census used a  
22 sample for this study?

23 A. A sample for what study?

24 Q. This study, to correct the 2010 census.

25 A. Well, they're not correcting the 2010 Census.

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 I think they're just doing an analysis of undercount 2 and overcount nationwide. So this is not a correction 3 as opposed to the file that actually exists for 2000 4 that did do an undercount/overcount all the way down to 5 block level. 6 I mean, they were using statisticated statistics 7 to do it. And because of that, eventually they 8 disowned that particular population data set due to 9 other issues relating to sampling error and nonsampling 10 error. 11 Q. From 2000? 12 A. Right. 13 Q. We're talking about 2000? 14 A. Right. Right. So they did not do it again in 15 2010. 16 Q. But this document is related to the 2010 17 Census; is that correct? 18 A. Right. But nationwide. 19 Q. Nationwide. 20 And your colleague Dr. Gordon used nationwide 21 figures to determine the percentage of disenfranchised 22 African Americans in the Ferguson-Florissant School 23 District, right? 24 A. Well, I don't know. I've not seen the report. 25 And you're telling me that and I assume that.</p>	<p style="text-align: right;">Page 120</p> <p>1 Section 2 case, out in San Juan County, Utah, where 2 Indians make up about fifty-one percent of the voting 3 age population and about fifty-four percent of the 4 total population. 5 I chose not to use this in that case in my expert 6 report because it's a nationwide study. And I cannot 7 take four point nine percent and nationwide -- 8 indicating an undercount nationwide and apply that 9 specifically to the portion of the Navaho Reservation 10 which is in San Juan County. 11 So that's an instance of where I'm being 12 completely consistent in not using data that is 13 extremely favorable to my position because it's 14 nationwide data and not local data. 15 Q. So, I think I'm clear on the fact that you do 16 not believe that an expert should use nationwide data 17 to affect local numbers? 18 A. To affect local numbers? 19 Q. Uh-huh. 20 A. Probably not. But there's nothing wrong with 21 Dr. Kimball pointing that out. But it shouldn't have 22 an impact on how you're drawing districts at the block 23 level in a Gingles 1 exercise. 24 Q. Okay. In Dr. Rodden's initial report he shows 25 that the white population is more geographically</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. And if he did that, is it okay for him to use 2 a national number to determine disenfranchised African 3 Americans but not to adjust your numbers when it comes 4 to BVAP? 5 A. Well, he can do what he wants to do. It is 6 somewhat speculative. But I'm saying that just from my 7 own opinion. That has nothing do with his work 8 regarding Gingles 2 and 3. 9 But to really -- to really be definitive we would 10 need to know the numbers of black felons in the school 11 district vis-a-vis white felons and then arrive at a 12 figure. 13 Q. So as a result of this release from the Census 14 Bureau you would not adjust your numbers in any way? 15 A. Oh, of course not. This is nationwide. It 16 has absolutely no relevance. 17 I do recall reading it. In fact, I remember 18 reading the next paragraph. "Coverage of the American 19 Indian and Alaska Native population varied by 20 geography. American Indians and Alaska natives living 21 on reservations were undercounted by four point nine 22 percent, compared with a zero point nine percent 23 overcount in 2000. 24 Now, I read that paragraph. I remember reading 25 this. And I'm involved in a very significant case,</p>	<p style="text-align: right;">Page 121</p> <p>1 concentrated than the black population. Have you used 2 data from census blocks, block groups, or tracts to 3 examine the relative geographic concentration of 4 African Americans and whites in the district? 5 A. No. I think -- I mean, that's interesting 6 that he applied that measure. Yeah, I suppose it's 7 interesting but it's going a step beyond what's 8 necessary in a Gingles 1 case because I share in my 9 opinion without a doubt conclusively that African 10 Americans live in an area that is sufficiently compact. 11 And they're numerous enough to be included in four out 12 of seven majority black districts. 13 And I've shown that graphically as well at the 14 block group level and also looked at census blocks. 15 And so, you know, that measure is fine and it does 16 show a certain level of integration perhaps compared to 17 some places but it's not enough to overcome the Gingles 18 1 yardstick that we can get four out of seven districts 19 easy. 20 Q. And you don't think it's useful for the court 21 to know that whites are more geographically 22 concentrated than African Americans? 23 A. It doesn't mean anything. But there's nothing 24 wrong with telling the court that. And you can sort of 25 maybe see that even from my block group map. You can</p>



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1 see that a large chunk of the whites appear to live in  
2 old town Florissant and a little bit up towards  
3 Jamestown. You can see it on my block group map.

4 Q. So if African Americans and whites are roughly  
5 similar in their population size, as you've already  
6 stated in your report, wouldn't a system of  
7 single-member districts actually be better for whites  
8 if they're more geographically concentrated?

9 A. Sometime deep in the future maybe. If your  
10 demographers are correct that the trend is going  
11 towards higher and higher African-American populations,  
12 maybe but maybe not. I mean, at some point with  
13 single-member districts as the percentage of blacks  
14 increase in the school district, assuming it does, then  
15 it will be easier to create five and then six. That's  
16 what happened over in Albany County, New York, over  
17 time where it's gone from three to four to five with  
18 each successive census.

19 So I could easily envision, assuming trends result  
20 in a higher majority -- a higher percentage of African  
21 Americans in 2020, I could easily envision where you  
22 could get five out of seven and still conform to  
23 traditional redistricting principles. Or you could do  
24 that now for that matter.

25 Q. Okay. On page 9 and 10, paragraph 16 of your

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1 supplemental report. You argue we should use visual  
2 reality rather than looking at geographic concentration  
3 indexes or the dissimilarity index; is that right?

4 A. Well, you know, it's fine to do that, to use  
5 dissimilarity indexes or indices, but in this case you  
6 can quickly tell from this map in Figure 2 and the  
7 accompanying map in the -- I don't know what the  
8 exhibit is. I think it's like B or B-2 or C or  
9 something in my -- with my original expert report.

10 You can see that African Americans are  
11 sufficiently concentrated in the south end as well as  
12 part of the northern part of the district to create  
13 four out of seven districts.

14 Q. Okay. So I grew up in Ferguson-Florissant  
15 School District so I know the area really, really well.

16 A. Uh-huh.

17 Q. So will you agree with me that the part that's  
18 dark pink, I will say, that is to the -- in the  
19 center -- or south of 270, west of 170 is almost all  
20 airport?

21 A. That's true. But it's a single census block  
22 group. For whatever reason they did not create a  
23 second block group of just the airport. Sometimes the  
24 Census Bureau does that there, I think. But in this  
25 case, it's all one block group.

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1 And if we look at Exhibit -- Exhibit C, we have  
2 population totals for black population. And it's kind  
3 of hard to see those little purple lines, but that  
4 particular block group that includes the airport  
5 extends all the way over to Kinloch. And it has five  
6 hundred and sixty-one persons. And there's another  
7 block group south of 70 with seven hundred and  
8 forty-eight.

9 Q. I just want to make a point about your visual  
10 inspection here. Looking at this map where you made  
11 the report -- made the point in this report, not your  
12 initial report, that visual inspection is usually good.  
13 But wouldn't a general visual inspection of this give  
14 the wrong impression of the number of blacks living in  
15 that section when we know there's no blacks living or  
16 anybody living in the airport?

17 A. Well, you know, not really. It would actually  
18 show that the minority population is even more  
19 concentrated because you've got the airport there. And  
20 you can pretty much see where it is because there's no  
21 roads or anything.

22 If you blank that out and just made it gray, like  
23 I did for part of the Hazelton component of the school  
24 district, then what you would have basically is all  
25 that population being concentrated over around Kinloch

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1 and so it would be more concentrated.

2 Q. But what I see being from the area is one  
3 concentrated area in the south of the district of  
4 majority African Americans, one concentrated area in  
5 the north part of the district around Old Town  
6 Florissant of white population, and the entire rest of  
7 the district fairly integrated. That's what I see.  
8 That's what my visual inspection says.

9 A. Well, yeah. I mean, the area around Old Town  
10 is under twenty percent black so that's predominantly  
11 white area concentrated, and then there are some blocks  
12 in the north that appear to be reasonably integrated,  
13 forty to sixty percent, and a lot of the south end,  
14 everything south of 270 -- well, not everything but  
15 everything from, you know, Ferguson and over into the  
16 Kinloch and Berkeley areas is sixty to eighty or even  
17 eighty to ninety-five percent black.

18 But in some ways you don't even have to do the  
19 block group level analysis. If you can show as I have  
20 shown in the Illustrative Plans 1 and 2 that you can  
21 draw two reasonably compact -- two different plans that  
22 are reasonably compact -- with reasonably compact  
23 districts following traditional redistricting  
24 principles, then you've basically proven Gingles 1.

25 Now, there's nothing wrong with doing the work

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 that Dr. Rodden does and I'm sure it's great for  2 academic papers and what -- it may show something, it  3 may not. But it's just not going to -- it's not going  4 to be particularly meaningful for Gingles 1.  5 Q. I'm only talking about your comment that  6 visual reality is -- visual inspection is probably more  7 effective than the calculations of dissimilarity  8 indexes. And I'm saying my visual inspection shows a  9 fairly integrated school district.  10 A. Okay. Well, you have your opinion, I have my  11 opinion. And we'll let the judge have his opinion.  12 Q. So doesn't the fact that our opinions are  13 different show that it's probably a better way to  14 settle this is by using statistics?  15 A. No, no, it really doesn't.  16 Q. Really? Okay.  17 A. That particular statistical measure is really  18 meaningless for Gingles 1.  19 Q. Are you aware of any cases in which the ACLU  20 actually uses quantitative indicators of segregation or  21 geographic concentration to address Gingles 1?  22 A. No.  23 Q. None?  24 A. Not that I've ever been involved in.  25 Q. They always use visual inspections?</p>	<p style="text-align: right;">Page 128</p> <p>1 A. As of today I have not.  2 MS. ORMSBY: I have nothing further.  3 MR. McDONALD: We have no questions at this  4 time.  5 MS. ORMSBY: Waive signature or not?  6 THE WITNESS: I constantly misspeak and speak  7 in fragments with improper punctuation and verb tense  8 so I will certainly want to sign it myself and fix it.  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Yes. But, you know, I haven't been involved  2 in all of them. I've never been involved in any case  3 where a dissimilarity index was used.  4 Q. How about geographic concentration index, ever  5 been involved in a case that uses that?  6 A. Neither.  7 MS. ORMSBY: Can we take maybe about a  8 ten-minute break. I'm about done. Just want to go  9 over some notes.  10 (Short break.)  11 Q. (By Ms. Ormsby) I just have, hopefully, two  12 more questions, depending on your answers.  13 A. First one is, well, I won't give you the  14 answers yet.  15 MR. McDONALD: Yes or no.  16 A. Maybe, maybe.  17 I don't know if that would work either.  18 Q. (By Ms. Ormsby) Have you been asked to form  19 an opinion on any subject that is not included already  20 in your two submitted reports?  21 A. I don't believe so.  22 Q. Do you plan or have you been asked to do any  23 additional work on this between now and trial?  24 A. Not been asked to but I could.  25 Q. But as of today you have not been asked to?</p>	<p style="text-align: right;">Page 129</p> <p>1 MCGRAW REPORTING, L.L.C.  2 Certified Court Reporter  3 2927 Droste Road  4 St. Charles, MO 63301  5 314.704.2727  6  7 August 23, 2015  8  9 American Civil Liberties Union  10 Ms. Sophia Lin Lakin  11 125 Broad Street, 18th Floor  12 New York, New York 10004-2400  13  14 In re: Deposition of William Cooper  15 NAACP, et al vs. Ferguson-Florissant  16  17 Dear Ms. Lakin,  18 Enclosed please find your copy of the transcript,  19 the original signature page, and the errata sheets for  20 the deposition of Mr. Cooper. Please have him read the  21 transcript, make any necessary corrections on the  22 errata sheets, and sign the original signature page and  23 the errata sheets in front of a notary public.  24  25 Please send the signed and notarized signature  page and errata pages directly to Ms. Ormsby, as she  will have the original transcript.    If you have any questions, please don't hesitate  to call me.    Sincerely,    Sandy McGraw</p>

I, WILLIAM COOPER, do hereby state that I have read the foregoing questions and answers in this transcript of my deposition, page 5 through and including page 128, and that this is a true and accurate report of said answers given in response to the questions propounded and appearing herein.

\_\_\_\_\_  
WILLIAM COOPER

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_.

# ERRATA SHEET

I do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

PAGE/LINE CORRECTION AND REASON FOR CORRECTION

\_\_\_\_\_  
WILLIAM COOPER

# ERRATA SHEET

I do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

PAGE/LINE CORRECTION AND REASON FOR CORRECTION

\_\_\_\_\_  
WILLIAM COOPER

STATE OF MISSOURI )

) ss

COUNTY OF ST. CHARLES )

I, Sandra McGraw, Certified Court Reporter within and for the State of Missouri, do hereby certify that pursuant to agreement between counsel came before me in the law offices of Crotzer & Ormsby, 130 South Bemiston Avenue, Suite 602, in the County of St. Louis, State of Missouri, WILLIAM COOPER, who was by me first duly sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination was reduced to shorthand writing by me on the day, between the hours, and at the place, and in that behalf aforesaid; and afterwards transcribed into typewriting, and presented to the deponent for signature and his said deposition is now herewith returned.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Sandra McGraw, CCR #614